

04-1053-CD
PETER NAKOSKI, etal

VS
MCDONALD'S CORPORATION, etal

Juanbe v Phelly
431 42d 1073 (81)

Date: 07/13/2006

Clearfield County Court of Common Pleas

User: LMILLER

Time: 10:37 AM

ROA Report

Page 1 of 1

Case: 2004-01053-CD

Current Judge: Fredric Joseph Ammerman

Peter Nakoski, Katherine Nakoski vs. McDonald's Corporation, Beatty Restaurant Enterprises, Inc.

Civil Other

Date		Judge
07/12/2004	✓ Filing: Civil Complaint Paid by: Hal K. Waldman Receipt number: 1882668 Dated: 07/12/2004 Amount: \$85.00 (Check) One CC Sheriff	No Judge
07/19/2004	✓ Affidavit of Service, Complaint in Civil Action, upon McDonald's Corporation, by Certified Mail/Return Receipt Requested. Filed by: s/Hal K Waldman, Esq. No cc.	No Judge
08/06/2004	✓ Sheriff Return, NOW July 22, 2004, Complaint, served on Beatty Restaurant Enterprises-Inc. t/d/b/a McDonald's. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
09/29/2004	✓ Praecipe For Entry of Appearance, filed on behalf of Defendants, by s/ Christopher T. Lee, Esquire. Certificate of Service, by US First Class Mail, upon Hal K. Waldman, Esquire. 1 CC to Atty.	No Judge
09/30/2004	✓ Answer And New Matter, with Notice to Plead within 20 days from the date of service, filed by s/Christopher T. Lee, Esq. Certificate of Service, served upon Hal K. Waldman, Esquire, Sept. 29th 2004 by U.S. First class mail. No CC.	No Judge
11/10/2004	✓ Reply To New Matter, on behalf of Plaintiffs, filed by s/ Howard F. Murphy, Esquire. No CC. Certificate of Service, served upon Christopher T. Lee, Esquire, on 8th day of Nov. 2004.	No Judge
11/07/2005	✓ Motion To Compel, filed by s/ Howard F. Murphy, Esquire. 2CC Atty	No Judge
11/14/2005	✓ Order of Court AND NOW, this 10th day of November 2005, it is hereby ORDERED and DECREED that the Defendants shall provide full and complete answers, documents and information responsive to the Plaintiffs' said discovery requests within thirty (30) days. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty Murphy.	Fredric Joseph Ammerman
11/21/2005	✓ Notice of Service of Answers to Interrogatories and Contention Interrogatories and Request for Production of Documents Directed to Defendant, Beatty Restaurant on counsel Hal K. Waldman Esq filed by s/ Christopher T. Lee Esq. No CC.	No Judge
05/30/2006	✓ Motion To Compel, filed by Timothy A. Montgomery, Esquire. 2CC Atty. Montgomery	No Judge
05/31/2006	✓ Order, NOW, this 31st day of May, 2006, it is Ordered that the Defendants shall provide Plaintiffs with full and complete responses to Plaintiffs' discovery requests, particularly a copy of the franchise agreement between McDonald's Corporation and Beatty Restaurant Enterprises, Inc. t/d/b/a McDonald's, within 30 days. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Montgomery	Fredric Joseph Ammerman
06/12/2006	✓ Motion For Reconsideration, filed by s/ Shannon E. Smith, Esquire. 1CC Atty. Smith	No Judge
06/16/2006	✓ Order of Court AND NOW, Defendant, McDonald's Corporation's Motion for Reconsideration is hereby GRANTED. Defendant, McDonald's Corporation will have twenty (20) days to prepare a written brief to Plaintiffs' Motion to Compel and Oral Argument will be heard on the 19th day of July 2006 in Courtroom 1 at 9:00 a.m. BY THE COURT: Fredric J. Ammerman, P. Judge. 1CC Atty Smith	Fredric Joseph Ammerman

7-18-06 ✓ Motion for Continuance

7-18-06 ✓ Order, dated 7-18-06

Fee Type: MISC			
Effective Date: 05/09/2006			
Record/Index (5 Year) - Number of fees collected: 6			
Receipt Date	Receipt Number	Proth Co Fees	Receipt Total
06/12/2006	01-04 PM 1914245	7.00	7.00
Payor: Curwensville Common			Case:
06/30/2006	01-16 PM 1914517	7.00	7.00
Payor: Shaw, Ronald			Case: 1996-0000863-CR
Distribution totals:			42.00
Satisfaction / Relief - Number of fees collected: 4			
Receipt Date	Receipt Number	Proth Co Fees	Receipt Total
06/07/2006	02-02 PM 1914164	7.00	7.00
Payor: Lee Green & Reiter Inc 88-753-CD			Case:
06/09/2006	11-06 AM 1914195	7.00	7.00
Payor: The City of DuBois 92-37-M/D			Case:
06/09/2006	02-24 PM 1914204	7.00	7.00
Payor: United States Government-IRS			Case:
06/12/2006	12-56 PM 1914241	7.00	7.00
Payor: Curwensville Common			Case:
Distribution totals:			28.00
Sheriff's Acknowledgment - Number of fees collected: 6			
Receipt Date	Receipt Number	Proth Co Fees	Receipt Total
06/02/2006	02-00 PM 1914107	5.00	5.00
Payor: Chester A. Hawkins, Sheriff			Case: 2005-00519-CD
06/06/2006	01-57 PM 1914145	5.00	5.00
Payor: Chester A. Hawkins, Sheriff			Case: 2005-00911-CD
06/09/2006	04-06 PM 1914210	5.00	5.00
Payor: Chester A. Hawkins, Sheriff			Case: 2005-01102-CD
06/12/2006	03-50 PM 1914253	5.00	5.00
Payor: Chester A. Hawkins, Sheriff			Case: 2005-01539-CD

Date: 11/6/2006

Clearfield County Court of Common Pleas

User: LMILLER

Time: 02:07 PM

ROA Report

Page 1 of 1

Case: 2004-01053-CD

Current Judge: Fredric Joseph Ammerman

Peter Nakoski, Katherine Nakoski vs. McDonald's Corporation, Beatty Restaurant Enterprises, Inc.

Civil Other

Date	Selected Items	Judge
9/6/2006	✓ Order, NOW, this 5th day of Sept., 2006, following argument on the Plaintiffs' Motion to Compel and the Defs' Petition for Reconsideration of the same, it is the Order of this Court: (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge 1CC Attys: H. Waldman, C. Lee, S. Smith	Fredric Joseph Ammerman
9/18/2006	✓ Notice of Service of Interrogatories and Request for Production of Documents Directed to Plaintiffs, filed by s/ Christopher T. Lee Esq. No CC.	Fredric Joseph Ammerman
11/3/2006	noted ✓ Motion for Summary Judgment, filed by Atty. Lee. no cert. copies.	Fredric Joseph Ammerman
11/6/2006	noted ✓ Motion For Protective Order, filed by s/ Christopher T. Lee, Esquire. No CC	Fredric Joseph Ammerman
	✓ Order AND NOW, to wit, this 6th day of November 2006, upon consideration of McDonald's Corporation's request for an expedited and telephonic hearing on its Motion for Protective Order, it is hereby ORDERED as follows: The request is hereby granted and the Court will conduct a telephonic hearing on the 7th day of November 2006, at 10:00 a.m. Conference call arrangements shall be made by counsel for McDonald's Corporation. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. Faxed copies to Attys: C. Lee and H. Waldman by Judge Ammerman's Office and 1CC Mailed by Prothonotary's Office to Attys: Lee and Waldman.	Fredric Joseph Ammerman

11-8-06 ✓ Order, dated 11-7-2006

Date: 1/15/2007

Clearfield County Court of Common Pleas

User: LMILLER

Time: 09:38 AM

ROA Report

Page 1 of 1

Case: 2004-01053-CD

Current Judge: Fredric Joseph Ammerman

Peter Nakoski, Katherine Nakoski vs. McDonald's Corporation, Beatty Restaurant Enterprises, Inc.

Civil Other

Date	Selected Items	Judge
1/5/2007	✓ Answer and New Matter filed by s/ Christopher T. Lee Esq. No CC.	Fredric Joseph Ammerman
1/8/2007	✓ Motion to Lift Protective Order, filed by s/Timothy Montgomery, Esq. No CC	Fredric Joseph Ammerman
1/9/2007	✓ Order, NOW, this 9th day of Jan., 2007, upon consideration of the foregoing motion, it is Ordered that: (see original). An evidentiary hearing on disputed issues of material fact shall be held on Jan. 12, 2007 at 1:30 p.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC Atty. Waldman (mailed 1/9/07) Plff. by phone and advised them to notify Defendants	Fredric Joseph Ammerman
1/10/2007	✓ Defendant's Supplement to Motion for Summary Judgment, filed by s/Christopher T. Lee, Esq. No CC	Fredric Joseph Ammerman
1/11/2007	✓ Defendant's Response to Motion to Lift Protective Order, filed by s/ Andrew T. Tillapaugh, Esquire. No CC	Fredric Joseph Ammerman
	✓ Response To Motion For Summary Judgment, filed by s/ Timothy Montgomery, Esquire. No CC	Fredric Joseph Ammerman

*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO.	0319
DESTINATION ADDRESS	3420870
PSWD/SUBADDRESS	
DESTINATION ID	Sharon
ST. TIME	01/08 08:38
USAGE T	00' 34
PGS.	4
RESULT	OK

Fax: 814-765-7659

Courthouse

Fax

To: Sharon From: William A. Shaw
Fax: 342-0870 Date: January 8, 2007
Phone: Pages: 4
Re: Judgement Report CC:
☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle
Comments:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

vs.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT
ENTERPRISES, INC. t/d/b/a
MCDONALD'S,

Defendants.

CIVIL DIVISION

No.: 04-1053-CJ

COMPLAINT IN CIVIL ACTION

Filed on Behalf of Plaintiffs

Counsel of Record for this Party

HAL K. WALDMAN, ESQUIRE
PA I.D. #: 26514

Hal K. Waldman & Associates
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

JURY TRIAL DEMANDED

FILED 100 SHff
m/2136/01 Atty pd. 85.02
JUL 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.:
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
David S. Meholick, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

By: 
Hal K. Waldman, Esquire
Counsel for Plaintiffs

PETER NAKOSKI and KATHERINE) CIVIL DIVISION
NAKOSKI, his wife,)
)
Plaintiffs,)
)
vs.)
)
MCDONALD'S CORPORATION and)
BEATTY RESTAURANT)
ENTERPRISES, INC. t/d/b/a)
MCDONALD'S,)
)
Defendants.)

AND NOW, come the Plaintiffs, Peter Nakoski and Katherine Nakoski, his wife, by and through their attorneys, Hal K. Waldman and Hal K. Waldman & Associates and file this Complaint in Civil Action as follows:

1. Plaintiffs Peter Nakoski and Katherine Nakoski, his wife, are adult individuals residing at 1716 Treasure Lake, DuBois, County of Clearfield, Commonwealth of Pennsylvania, 15801.
2. Defendant McDonald's Corporation is a corporation headquartered at One McDonald's Plaza in Oak Brook, state of Illinois 60521 that regularly conducts business in the Commonwealth of Pennsylvania and in the County of Clearfield, Commonwealth of Pennsylvania.
3. Defendant Beatty Restaurant Enterprises, Inc., t/d/b/a McDonald's (hereinafter known as Defendant Beatty) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania,

headquartered at 118 W. Long Avenue, P.O. Box 543, DuBois, County of Clearfield, Commonwealth of Pennsylvania, 15801 and regularly conducting business at McDonald's Restaurant, WalMart Plaza, Route 255, DuBois, County of Clearfield, Commonwealth of Pennsylvania, 15801.

4. At all times relevant hereto, the Defendant McDonald's Corporation supplied its franchisee Defendant Beatty with products, equipment and services, including training of Defendant Beatty's restaurant staff and employees, including management employees. Defendant McDonald's did so for its direct pecuniary benefit.
5. At all times relevant hereto, the Defendant McDonald's Corporation required its franchisee to maintain the restaurant premises to certain standards as set forth in its franchise agreement and in furtherance of said compliance, Defendant McDonald's inspected said premises and evaluated the premises as set forth in its franchise agreement.
6. At all times relevant hereto, the Defendant Beatty, individually and through its agents, representatives, servants and/or employees, owned, operated, possessed and controlled the business known as McDonald's located in the WalMart Plaza on Route 255 in DuBois, Clearfield County, Commonwealth of Pennsylvania.
7. At all times relevant hereto, Defendant Beatty maintained and operated the McDonald's pursuant to the franchise agreement between Defendant Beatty and Defendant McDonald's Corporation.

8. At all times relevant hereto, the food products, equipment and/or instrumentalities that caused the harm to Plaintiffs were under the sole and exclusive control of Defendants.
9. On May 5, 2003, Plaintiff Peter Nakoski was a business invitee of the Defendant Beatty and was purchasing food at the Defendant Beatty's McDonald's.
10. At that time and place, Plaintiff purchased take-out food from Defendant Beatty's McDonald's for the direct pecuniary benefit of Defendant Beatty and that purchase included French fries.
11. As Plaintiff Peter Nakoski ate the French fries purchased from Defendant Beatty's McDonald's, he bit into a screw or other hard metal object, causing severe, serious and permanent injuries hereinafter described.
12. The French fries purchased by Plaintiff Peter Nakoski from Defendant Beatty were unreasonably dangerous and not fit for consumption because the food included the screw or other hard metal object not intended for human consumption.
13. Defendant Beatty and Defendant McDonald's Corporation knew or should have known that placing or allowing a screw or other hard metal object to remain in food intended for human consumption posed an unreasonable risk of harm to purchasers and consumers of its products generally and to Plaintiff Peter Nakoski particularly.

14. Defendant Beatty and Defendant McDonald's Corporation knew or should have known that the equipment was in disrepair.
15. Defendant Beatty and Defendant McDonald's Corporation knew or should have known that permitting the equipment to remain in disrepair posed an unreasonable risk of harm to purchasers and consumers of its products generally and to Plaintiff Peter Nakoski particularly.
16. Plaintiffs are entitled to compensation based on the doctrine of *res ipsa loquitur*.
17. As the direct and proximate result of Defendants' negligence, Plaintiff Peter Nakoski suffered the following injuries, all or some of which are permanent in nature:

- a. intense and severe tooth pain;
- b. head pain;
- c. severe head aches;
- d. chipped tooth;
- e. cold sensitivity;
- f. sensitivity to percussion;
- g. painful pressure in the jaw;
- h. injury to the nerves in the teeth;
- i. death of the nerves in the teeth;
- j. injury to the teeth requiring root canal surgeries;
- k. injury to the teeth requiring apicoectomy surgeries;
- l. sleeplessness;

- m. bruised tooth sockets;
- n. blistering and swelling in the gums, mouth and tongue;
- o. discoloration of the teeth;
- p. application of temporary crowns;
- q. application of permanent crowns;
- r. permanent numbness in the mouth;
- s. bruising to the face and left eye area; and
- t. receding gum line.

18. As the direct and proximate result of the foregoing incident and the resulting injuries and damages, Plaintiff has suffered, and/or suffers, and/or will continue to suffer from physical and mental discomfort, anguish, distress, pain, suffering and/or inconvenience.
19. As a direct and proximate result of the aforementioned incident and resulting injuries and/or damages, Plaintiffs have been compelled and/or are compelled and/or may continue to be compelled to expend monies for dental treatment, medical and dental aids, medicines, therapies and/or similar medical and/or dental and/or related instrumentalities and modalities.
20. As a direct and proximate result of the aforementioned incident and resulting injuries and/or damages, said Plaintiff has suffered and/or continues to suffer and/or may, in the future, suffer a loss of earnings and his earning power has been and/or may be diminished and lessened.

COUNT I

PETER NAKOSKI

V

MCDONALD'S CORPORATION

21. Paragraphs 1 through 20 are incorporated herein by reference as though set forth fully at length.
22. The aforementioned dangerous food served and sold to Plaintiff Peter Nakoski and the resulting injuries and damages sustained by the Plaintiffs were a direct and proximate result of the negligence of the Defendant McDonald's Corporation, its agents, servants, and/or employees as follows:
 - a. In failing to properly and adequately install the restaurant equipment so that it was in safe and working order; and/or
 - b. In failing to properly and adequately inspect the restaurant equipment to ascertain that it was in and remained in safe and working order; and/or
 - c. In failing to properly and adequately repair the restaurant equipment so that it was in safe and working order, to prevent harm to customers generally and Plaintiff Peter Nakoski in particular; and/or
 - d. In failing to properly and safely prepare the French fries offered for sale for the direct pecuniary gain of Defendants; and/or
 - e. In failing to properly train managers and employees in the reasonable and safe operation of the restaurant equipment; and/or
 - f. In failing to properly train managers and employees to inspect the restaurant equipment to ascertain that it was in and remained in safe and working order; and/or

- g. In failing to implement adequate and sufficient policies and procedures for the inspection, repair and maintenance of the restaurant equipment and the restaurant premises; and/or
- h. In failing to properly and/or adequately oversee repairs to the restaurant equipment; and/or
- i. In failing to properly inspect the food products during preparation and serving of the food products.

WHEREFORE, Plaintiff demands that judgment be entered in his favor and against the Defendant McDonald's Corporation in an amount in excess of the jurisdictional limits, plus interest and costs.

COUNT II

PETER NAKOSKI

V

BEATTY RESTAURANT ENTERPRISES, INC.

- 23. Paragraphs 1 through 22 are incorporated herein by reference as though set forth fully at length.
- 24. The aforementioned dangerous food served and sold to Plaintiff Peter Nakoski and the resulting injuries and damages sustained by the Plaintiffs were a direct and proximate result of the negligence of the Defendant Beatty Restaurant Enterprises, Inc., servants, and/or employees as follows:
 - a. In failing to properly and adequately install the restaurant equipment so that it was in safe and working order; and/or
 - b. In failing to properly and adequately inspect the restaurant equipment to ascertain that it was in and remained in safe and working order; and/or

- c. In failing to properly and adequately repair the restaurant equipment so that it was in safe and working order, to prevent harm to customers generally and Plaintiff Peter Nakoski in particular; and/or
- d. In failing to properly and safely prepare the French fries offered for sale for the direct pecuniary gain of Defendants; and/or
- e. In failing to properly train managers and employees in the reasonable and safe operation of the restaurant equipment; and/or
- f. In failing to properly train managers and employees to inspect the restaurant equipment to ascertain that it was in and remained in safe and working order; and/or
- g. In failing to implement adequate and sufficient policies and procedures for the inspection, repair and maintenance of the restaurant equipment and the restaurant premises; and/or
- h. In failing to properly and/or adequately oversee repairs to the restaurant equipment; and/or
- i. In failing to properly inspect the food products during preparation and serving of the food products.

COUNT III

KATHERINE NAKOSKI V. MCDONALD'S CORPORATION AND BEATTY

RESTAURANT ENTERPRISES, INC.

- 25. Paragraphs 1 through 24 are incorporated herein by reference as though set forth fully at length.
- 26. At all times relevant hereto the Plaintiff Katherine Nakoski was and is the wife of the Plaintiff Peter Nakoski.

27. As a result of the negligent conduct of said Defendants as described hereinabove and due to the resultant injuries sustained by her husband, Plaintiff Katherine Nakoski has been and/or may continue to be deprived of the assistance, contributions, companionship, consortium and society of her husband, all of which have been and will be to her great damage and loss.

WHEREFORE, Plaintiff demands that judgment be entered in her favor and against the Defendants in an amount in excess of the jurisdictional amount, plus interest and costs.

Respectfully submitted:

By: _____



Hal K. Waldman, Esquire
Counsel for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

vs.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT
ENTERPRISES, INC. t/d/b/a
MCDONALD'S,

Defendants.

CIVIL DIVISION

No.:

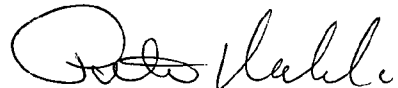
VERIFICATION

I, Peter Nakoski, hereby swear that the statements contained in the foregoing **Complaint in Civil Action** are true and correct to the best of my personal knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

DATE

6/28/04

PETER NAKOSKI



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.:
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S and BEATTY)	
RESTAURANT ENTERPRISES, INC.,)	
t/d/b/a MCDONALD'S,)	
)	
Defendants.)	

VERIFICATION

I, Katherine Nakoski, hereby swear that the statements contained in the foregoing **Complaint in Civil Action** are true and correct to the best of my personal knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

6/28/04
DATE

Katherine Nakoski
KATHERINE NAKOSKI

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

vs.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT
ENTERPRISES, INC. t/d/b/a
MCDONALD'S,

Defendants.

CIVIL DIVISION

No.: 04-1053-CD

AFFIDAVIT OF SERVICE

Filed on Behalf of Plaintiffs

Counsel of Record for this Party

HAL K. WALDMAN, ESQUIRE
PA I.D. #: 26514

Hal K. Waldman & Associates
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

JURY TRIAL DEMANDED

FILED

NO
m/10:44/64 cc
JUL 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.:
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

AFFIDAVIT OF SERVICE

AND NOW, come the plaintiffs, Peter Nakoski and Katherine Nakoski, his wife, and HAL K. WALDMAN & ASSOCIATES and HAL K. WALDMAN, ESQUIRE, and file this Affidavit of Service, pursuant to Section 5323 of the Pennsylvania Judicial Code, and states that a true and correct copy of the Complaint in Civil Action was served upon the following defendant in the manner indicated below:

Certified Mail/Return Receipt Requested:

McDonald's Corporation
Attn: Legal Department
One McDonald's Plaza
One Brook, IL 60521

Certified No.: 7003 2260 0003 4257 6126

The return receipt, signed by an authorized agent for the above defendant, is attached hereto and made a part thereof.

Respectfully submitted:

By: Hal K. Waldman by Elker
Hal K. Waldman, Esquire
Attorney for Plaintiffs

Sworn to and subscribed

before me this 15th

day of July, 2004

Margaret A. Elker
Notary Public

Notarial Seal
Margaret A. Elker, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Aug. 31, 2004
Member, Pennsylvania Association of Notaries

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: McDonald's Corporation Attn: Legal Department One McDonald's Plaza Oak Brook, IL 60521		B. Received by (Printed Name) H. PAIPA	C. Date of Delivery 7-12
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No JUL 12 2004	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes 7003 2260 0003 4257 6126	

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

FILED

JUL 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

In The Court of Common Pleas of Clearfield County, Pennsylvania

NAKOSKI, PETER & KATHERINE

Sheriff Docket #

15947

VS.

04-1053-CD

MCDONALD'S CORPORATION and BEATTY RESTAURANT ENTERPRISES

COMPLAINT

SHERIFF RETURNS

NOW JULY 22, 2004 AT 11:40 AM SERVED THE WITHIN COMPLAINT ON BEATTY RESTAURANT ENTERPRISES INC. t/d/b/a McDONALD'S, DEFENDANT AT EMPLOYMENT, WAL-MART PLAZA, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DEBORAH JERN, GEN. MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/COUDRIET

Return Costs

Cost	Description
46.87	SHERIFF HAWKINS PAID BY: ATTY CK# 11466
10.00	SURCHARGE PAID BY: ATTY CK# 11465

Sworn to Before Me This

16th Day Of August 2004

William A. Shaw

WILLIAM A. SHAW
Prothonotary

My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins

Chester A. Hawkins
Sheriff

FILED

018-5001
AUG 06 2004
efb

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,
Plaintiffs,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a McDONALD's,

Defendants.

CIVIL DIVISION

No. 2004 - 1053 - CD

Issue No.

PRAECIPE TO ENTER APPEARANCE

Code:

Filed on behalf of McDonald's Corporation
and Beatty Restaurant Enterprises, Inc., t/d/b/a
McDonald's, Defendants

Counsel of record for this party:

Christopher T. Lee, Esq.
Pa. I.D. #62422

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED *EBK*

SEP 29 2004

W/10:30/C
William A. Shaw

Prothonotary/Clerk of Courts

1 CEN 5 TO ATT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

VS.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC. t/d/b/a McDONALDS,

Defendants.

No. 2004 - 1053 - CD

PRAECIPE TO ENTER APPEARANCE

Kindly enter the appearance of Dickie, McCamey & Chilcote, P.C. and Christopher T. Lee, Esquire on behalf of McDonald's Corporation and Beatty Restaurant Enterprises, Inc., t/d/b/a McDonald's, Defendants in the above-captioned case.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By

Christopher T. Lee, Esq.

Pa. I.D. #62422

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

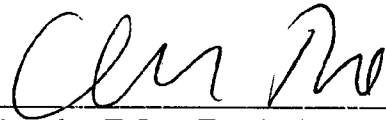
Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Christopher T. Lee, Esquire, hereby certify that true and correct copies of the foregoing Praecipe to Enter Appearance have been served this 27th day of SEPTEMBER, 2004, by U.S. first-class mail, postage prepaid, to all counsel of record:

Hal K. Waldman, Esquire
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
Attorneys for Plaintiff

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Christopher T. Lee, Esquire
Attorneys for Defendants

FILED

SEP 29 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

v.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC. t/d/b/a MCDONALDS,

Defendants.

CIVIL DIVISION

No. 2004-1053-CD

Issue No.

ANSWER AND NEW MATTER

Code:

Filed on behalf of Defendant, BEATTY
RESTAURANT ENTERPRISES, INC. t/d/b/a
MCDONALD'S

Counsel of record for this party:

Christopher T. Lee, Esq.
PA. I.D. #62422

NOTICE TO PLEAD

TO: Plaintiff

You are hereby notified to file a
written response to the enclosed Answer and
New Matter within twenty (20) days from the
date of service hereof or a judgment may be
entered against you.

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

By



Christopher T. Lee, Esquire

ELK
FILED
m/11:30/04
SEP 30 2004

William A. Shaw
Prothonotary/Clerk of Courts

Beatty Restaurant Enterprises is headquartered at 118 W. Long Avenue. The correct address for Beatty Restaurant Enterprises headquarters is 112 Dixon Avenue, P.O. Box 543, DuBois, Pennsylvania, 15801.

4. The allegations contained in Paragraph 4 contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the said allegations are denied and strict proof is to be made at the time of trial.

5. The allegations contained in Paragraph 5 refer to a party other than this Defendant. Consequently, said allegations are denied.

6. The allegations contained in Paragraph 6 are admitted.

7. The allegations contained in Paragraph 7 contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the said allegations are denied and strict proof is to be made at the time of trial.

8. The allegations contained in Paragraph 8 contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the said allegations are denied and strict proof is to be made at the time of trial. By way of further response, Defendant Beatty owned and operated the subject restaurant at the time the alleged incident.

9. The allegations contained in Paragraph 9 contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the said allegations are denied and strict proof is to be made at the time of trial.

10. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of

Plaintiffs' Complaint. Consequently, said allegations are denied and strict proof thereof is demanded at the time of trial.

11. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of Plaintiffs' Complaint. Consequently, said allegations are denied and strict proof thereof is demanded at the time of trial.

12. The allegations set forth in Paragraph 12 of Plaintiffs' Complaint state conclusions of law to which no response is required. To the extent a response is deemed necessary, the allegations contained therein are denied and strict proof is to be made at the time of trial.

13. The allegations set forth in Paragraph 13 of Plaintiffs' Complaint state conclusions of law to which no response is required. To the extent a response is deemed necessary, the allegations contained therein are denied and strict proof is to be made at the time of trial.

14. The allegations set forth in Paragraph 14 of Plaintiffs' Complaint state conclusions of law to which no response is required. To the extent a response is deemed necessary, the allegations contained therein are denied and strict proof is to be made at the time of trial.

15. The allegations set forth in Paragraph 15 of Plaintiffs' Complaint state conclusions of law to which no response is required. To the extent a response is deemed necessary, the allegations contained therein are denied and strict proof is to be made at the time of trial.

16. The allegations set forth in Paragraph 16 of Plaintiffs' Complaint state conclusions of law to which no response is required. To the extent a response is deemed necessary, the allegations contained therein are denied and strict proof is to be made at the time of trial.

17. The allegations contained in Paragraph 17 of Plaintiffs' Complaint are denied. As to Plaintiffs' averments of injury and damage contained in Paragraph 17, including subparagraphs (a) through (t), this Defendant is without knowledge or information sufficient to form a belief as to the truth of said averments, and hence, said averments are denied and strict proof thereof is demanded at the time of trial.

18. The allegations contained in Paragraph 18 of Plaintiffs' Complaint are denied. As to Plaintiffs' averments of injury and damage, this Defendant is without knowledge or information sufficient to form a belief as to the truth of said averments, and hence, said averments are denied and strict proof thereof is demanded at the time of trial.

19. The allegations contained in Paragraph 19 of Plaintiffs' Complaint are denied. As to Plaintiffs' averments of injury and damage, this Defendant is without knowledge or information sufficient to form a belief as to the truth of said averments, and hence, said averments are denied and strict proof thereof is demanded at the time of trial.

20. The allegations contained in Paragraph 20 of Plaintiffs' Complaint are denied. As to Plaintiffs' averments of injury and damage, this Defendant is without knowledge or information sufficient to form a belief as to the truth of said averments, and hence, said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, this Defendant respectfully requests that this Court enter judgment in its favor and against the Plaintiffs together with costs and such further relief as this Court deems appropriate.

COUNT I
PETER NAKOSKI
V
MCDONALD'S CORPORATION

21-22. The averments set forth in Paragraphs 21 and 22 of Plaintiffs' Complaint are directed toward a party other than the undersigned Defendant such that no response is required. To the extent a response is deemed necessary said allegations are denied and strict proof is to be made at the time of trial.

WHEREFORE, this Defendant respectfully requests that this Court enter judgment in its favor and against the Plaintiffs together with costs and such further relief as this Court deems appropriate.

COUNT II
PETER NAKOSKI
V
BEATTY RESTAURANT ENTERPRISES, INC.

23. In response to Paragraph 23 of Plaintiffs' Complaint, this Defendant hereby incorporates by reference as set forth herein as full response to Paragraphs 1 through 22 in their entirety.

24. The allegations set forth in Paragraph 24 of Plaintiffs' Complaint, including subparagraphs (a) through (i), state conclusions of law to which no response is required. To the extent a response is deemed necessary, the allegations contained in Paragraph 24 of Plaintiffs' Complaint, including subparagraphs (a) through (i), are denied and strict proof is to be made at the time of trial.

WHEREFORE, this Defendant respectfully requests that this Court enter judgment in its favor and against the Plaintiffs together with costs and such further relief as this Court deems appropriate.

COUNT III
KATHERINE NAKOSKI
V
MCDONALD'S CORPORATION AND BEATTY RESTAURANT ENTERPRISES, INC.

25. In response to Paragraph 25 of Plaintiffs' Complaint, this Defendant hereby incorporates by reference as set forth herein as full response to Paragraphs 1 through 24 of Plaintiffs' Complaint in their entirety.

26. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of Plaintiffs' Complaint. Consequently, said allegations are denied and strict proof thereof is demanded at the time of trial.

27. The allegations contained in Paragraph 27 of Plaintiffs' Complaint are denied. As to Plaintiff, KATHERINE NAKOSKI's, averments of injury and damage, this Defendant is without knowledge or information sufficient to form a belief as to the truth of said averments, and hence, said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, this Defendant respectfully requests that this Court enter judgment in its favor and against the Plaintiffs together with costs and such further relief as this Court deems appropriate.

NEW MATTER

28. Defendant denies that there was any defect on the premises or contained in the fries allegedly purchased and consumed by Plaintiff.

29. This Defendant avers that any defective condition on/of its property was open and obvious.

30. This Defendant avers any actual or constructive notice of any allegedly defective condition.

31. This Defendant avers as an affirmative defense that husband-Plaintiff himself was negligent and that such negligence reduces and/or bars any recovery under the Pennsylvania Comparative Negligence Statute.

32. This Defendant avers as an affirmative defense that husband-Plaintiff suffered from a pre-existing condition.

33. Plaintiffs' injuries and/or damages, if any, were caused by conduct of entities other than this Defendant and for whose conduct this Defendant is not responsible for.

34. This Defendant avers that the Plaintiffs assumed the risk of injury under the circumstances which serves as a complete or partial bar to the entirety of Plaintiffs' claims.

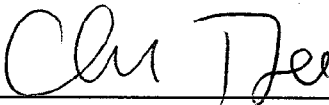
35. Plaintiffs have failed to state a claim upon which relief can be granted.

36. To the extent justified by the facts developed during discovery or at the time of trial, this Defendant raises as an affirmative defense that Plaintiff have failed to mitigate their damages.

WHEREFORE, this Defendant respectfully requests that this Court enter judgment in its favor and against the Plaintiffs together with costs and such further relief as this Court deems appropriate.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P. C.

By 
Christopher T. Lee, Esquire
Pa. I.D. #62422

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

*Attorney for Defendant, BEATTY
RESTAURANT ENTERPRISES, INC. t/d/b/a
McDONALD'S*

VERIFICATION

I, Fred Beatty, being duly sworn, depose and say that I am
President for Beatty Restaurant Enterprises, Inc. t/d/b/a McDonald's, and that I
verify the forgoing Answer and New Matter for and on behalf of Beatty Restaurant Enterprises, Inc.
t/d/b/a McDonald's, and am duly authorized to do so; that certain of the matters stated therein are
not within the personal knowledge of the deponent; that the facts stated therein have been assembled
by authorized agents, employees, and counsel; and deponent is informed that the facts stated therein
are true.

I declare under penalty of perjury under the laws of the State of Pennsylvania that the
foregoing is true to the best of my information, knowledge and belief.

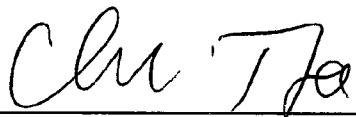
FR Beatty 9/28/04

CERTIFICATE OF SERVICE

I, Christopher T. Lee, Esquire, hereby certify that true and correct copies of the foregoing Interrogatories have been served this 29th day of SEPTEMBER, 2004, by U.S. first-class mail, postage prepaid, to all counsel of record:

Hal K. Waldman, Esquire
Hal K. Waldman & Associates
Suite 300, Dominion Tower
Pittsburgh, PA 15222
Attorney for Plaintiffs

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Christopher T. Lee, Esquire

*Attorney for Beatty Restaurant Enterprises, Inc.
t/a/b/a McDonald's, Defendant*

FILED

SEP 30 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

vs.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT
ENTERPRISES, INC. t/d/b/a
MCDONALD'S,

Defendants.

CIVIL DIVISION

No.: 2004 – 1053 - CD

REPLY TO NEW MATTER

Filed on Behalf of Plaintiffs

Counsel of Record for this Party

HAL K. WALDMAN, ESQUIRE
PA I.D. #: 26514

Howard F. Murphy, Esquire
PA I.D. #: 82271

Hal K. Waldman & Associates
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

JURY TRIAL DEMANDED

FILED

NOV 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.: 2004 – 1053 - CD
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

Reply To New Matter

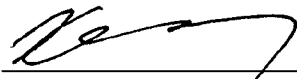
AND NOW, come the Plaintiffs, Peter Nakoski and Katherine Nakoski, his wife, by and through their attorneys, Hal K. Waldman, Esquire, Howard F. Murphy, Esquire and Hal K. Waldman & Associates and file this Reply to New Matter and in support aver as follows:

28 – 36. The averments contained at Paragraphs 28 through 36 of the Defendant's New Matter state conclusions of law to which no response is required.

WHEREFORE, the Plaintiffs demand that judgment be entered in their favor and against the Defendants in an amount in excess of the jurisdictional amount, plus interest and costs.

Respectfully submitted:

By:



Howard F. Murphy, Esquire
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Reply to New Matter** has been served upon the following parties, via First Class Mail, Postage Pre-paid, this 8th day of November, 2004:

**Christopher T. Lee, Esquire
Dickie, McCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402**

Hal K. Waldman & Associates,

By: _____


Howard F. Murphy, Esquire
Counsel for Plaintiff

Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

FILED

NOV 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.: 2004 - 1053 - CD
Plaintiffs,)	
	)	MOTION TO COMPEL
vs.)	
	)	Filed on Behalf of Plaintiffs
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT	)	Counsel of Record for this Party
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,	)	Howard F. Murphy, Esquire
	)	PA I.D. #: 82271
Defendants.)	
)	
)	
)	
	)	Hal K. Waldman & Associates
	)	Suite 300, Dominion Tower
	)	625 Liberty Avenue
	)	Pittsburgh, PA 15222
	)	(412) 338-1000
)	
	)	JURY TRIAL DEMANDED

FILED
m12:5
NOV 07 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.: 2004 - 1053 - CD
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

MOTION TO COMPEL

AND NOW, come the Plaintiffs, Peter Nakoski and Katherine Nakoski, his wife, by and through their attorneys, Hal K. Waldman, Esquire, Howard F. Murphy, Esquire and Hal K. Waldman & Associates and file this Motion to Compel and in support aver as follows:

1. On March 28, 2005, the Plaintiffs served interrogatories and requests for production of documents on counsel for the Defendants via mail. A true and correct copy of Counsel's letter dated March 28, 2005 is attached hereto as Exhibit "A".

2. On or about May 4, 2005, Counsel for the Defendants requested, via email, that counsel for Plaintiffs email said discovery requests to them and Plaintiffs'

Counsel complied with this request. A true and correct copy of the email exchange between Counsel is attached hereto as Exhibit "B".

3. On July 22, 2005, Counsel for the Plaintiffs requested that the Defendants provide their responses to said discovery within 20 days. A true and correct copy of Counsel's letter dated July 22, 2005 is attached hereto as Exhibit "C".

4. On July 27, 2005, Counsel for the Defendants requested, via telephone conversation, that the Plaintiff grant an additional extension of time to respond to said discovery until August 24, 2005. This request for an extension was granted by Plaintiffs' Counsel.

5. On October 10, 2005, Counsel for the Plaintiff inquired regarding the status of this overdue discovery via a telephone voice mail message for Defendants' Counsel and, to date, has not received a response to said voice mail message.

6. To date, the Defendants have not provided any answers responsive to said discovery requests nor have they made any objections thereto.

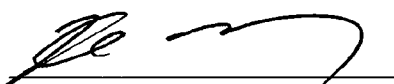
7. Accordingly, the Plaintiffs request that this Court enter an Order pursuant to Pa.R.C.P. 4019(a)(1)(i) compelling the Defendants to provide answers,

documents and information responsive to said discovery requests within twenty (20) days.

8. Likewise, because the Defendants' have failed to provide responses to said discovery despite being provided several extensions of time by the Plaintiffs' Counsel (who did so in order to avoid the unnecessary time and expense of having to prepare and present a motion to compel), the Plaintiffs request that this Court enter an Order requiring the Defendants to pay a reasonable attorney fee of \$750 to the Plaintiffs for the cost and time associated with preparing and presenting a motion to compel.

WHEREFORE, the Plaintiffs respectfully request this Court enter an Order compelling the Defendants to provide full and complete answers, documents and information responsive to said discovery requests within twenty (20) days and requiring the Defendants to pay a reasonable attorney fee of \$750 to the Plaintiffs for the cost and time associated with preparing and presenting a motion to compel.

Hal K. Waldman and Associates,

By: 
Howard F. Murphy, Esquire
Attorney for Plaintiffs

Hal K. Waldman and Associates

Attorneys At Law

DOMINION TOWER

Suite 300 • 625 Liberty Avenue

Pittsburgh, Pennsylvania 15222

1-800-350-4259

(412) 338-1000 • Fax: (412) 281-8055

BUTLER, PA
(724) 282-4696

KITTANNING, PA
(724) 548-7377

SAXONBURG, PA
(724) 352-9666

Howard F. Murphy, Esquire

E-mail: howardmurphy@waldmaninc.com

March 28, 2005

Christopher T. Lee, Esquire
Dickie, McCamey & Chilcote
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

In Re: *Peter Nakoski vs. McDonald's Corporation, et al.*
No.: 04-1053-CD

Dear Mr. Lee:

Enclosed please find Discovery requests addressed to each of the Defendants in the above referenced matter. Please have your clients respond to these requests within the time provided by the Rules of Civil Procedure. If you need me to email a copy of these documents to you I will be happy to do so.

Thank you for your time and attention to this matter. Naturally, if you have any questions or would like to discuss this matter further you should not hesitate to contact me.

Very truly yours,



Howard F. Murphy

/hm

Enclosure

A

Howard Murphy

To: Brinkos, Amy

Subject: RE: Nakoski v. McDonald's Corp.

No Problem. Let me know if you need anything else.

Howard

From: Brinkos, Amy [mailto:ABrinkos@dmcaw.com]

Sent: Wednesday, May 04, 2005 8:16 AM

To: Howard Murphy

Subject: Nakoski v. McDonald's Corp.

Dear Mr. Murphy,

I am assisting Chris Lee on this case. I am in the process of responding to your client's discovery requests. Would you kindly e-mail the requests to me as you suggested in your letter of March 28, 2005? Thank you for your cooperation.

Amy J. Brinkos, Esquire

Dickie, McCamey & Chilcote, P.C.

Two PPG Place, Suite 400

Pittsburgh, PA 15222-5402

Telephone: 412-392-5370

Fax: 412-392-5367

Toll Free: 1-800-243-5412

Email: brinkoa@dmclaw.com

Confidentiality Notice: This message is confidential and may be privileged. If you believe that this message has been sent to you in error, please reply to sender that you received this message in error; then, please delete this email. Thank you.

5/4/2005

B

Hal K. Waldman and Associates

Attorneys At Law

DOMINION TOWER

Suite 300 • 625 Liberty Avenue

Pittsburgh, Pennsylvania 15222

1-800-350-4259

(412) 338-1000 • Fax: (412) 281-8055

BUTLER, PA
(724) 282-4696

KITTANNING, PA
(724) 548-7377

SAXONBURG, PA
(724) 352-9666

Howard F. Murphy, Esquire
E-mail: howardmurphy@waldmaninc.com

July 22, 2005

Christopher T. Lee, Esquire
Amy Brinkos, Esquire
Dickie, McCamey & Chilcote
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

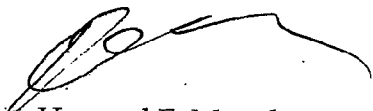
In Re: *Peter Nakoski vs. McDonald's Corporation, et al.*
No.: 04-1053-CD

Dear Counsel:

On March 28, 2005 I served discovery requests addressed to each of the Defendants in the above referenced matter. On May 4, 2005 I emailed said requests to Ms. Brinkos pursuant to her request. I have not heard anything from since then. Please advise whether you can provide your clients' answers within the next 20 days. If not, I will have to present a motion to compel discovery.

Thank you for your time and attention to this matter. Naturally, if you have any questions or would like to discuss this matter further you should not hesitate to contact me.

Very truly yours,



Howard F. Murphy

/hm

CC: Peter Nakowski

C

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Motion To Compel** has been served upon the following parties, via First Class Mail, Postage Pre-paid, this 4th day of November, 2005:

**Christopher T. Lee, Esquire
Dickie, McCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402**

Hal K. Waldman & Associates,

By: 

Howard F. Murphy, Esquire
Counsel for Plaintiff

Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

FILED

NOV 07 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

vs.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT
ENTERPRISES, INC. t/d/b/a
MCDONALD'S,

Defendants.

CIVIL DIVISION

No.: 2004 - 1053 - CD

ORDER OF COURT

AND NOW, this 10 day of Nov, 2005, it

is hereby ORDERED and DECREED that the Defendants shall provide full and
complete answers, documents and information responsive to the Plaintiffs' said

discovery requests within ~~twenty (20)~~ Thirty (30) days, FJA and in addition Defendants shall pay

~~counsel fees in the amount of \$750.00 to the Plaintiffs.~~ FJA

BY THE COURT:

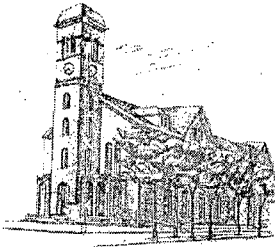
 J.

FILED ^{2cc}
01/10/05/11 Atty
NOV 14 2005 Murphy
William A. Shaw
Prothonotary/Clerk of Courts

FILED

NOV 14 2005

William A. Shaw
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

X You are responsible for serving all appropriate parties.

_____ The Prothonotary's office has provided service to the following parties:

_____ Plaintiff(s)/Attorney(s)

_____ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

CIVIL DIVISION

No. 2004 - 1053 - CD

Issue No.

**NOTICE OF SERVICE OF ANSWERS TO
INTERROGATORIES AND
CONTENTION INTERROGATORIES
AND REQUEST FOR PRODUCTION OF
DOCUMENTS DIRECTED TO
DEFENDANT, BEATTY RESTAURANT**

Code:

Filed on behalf of Defendant, Beatty
Restaurant Enterprises, Inc., t/d/b/a
McDonald's

Counsel of record for this party:

Christopher T. Lee, Esquire
PA I.D. # 62422

DICKIE, MCCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED *no cc*
m 11:30 AM
NOV 21 2005 

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

CIVIL DIVISION

No. 2004 - 1053 - CD

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

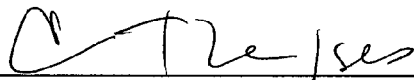
**NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES AND CONTENTION
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT, BEATTY RESTAURANT**

TO: Clearfield County Prothonotary

Please be advised that I have served Answers to Interrogatories and Contention Interrogatories and Request for Production of Documents directed to Defendant, Beatty Restaurant on the following counsel of record: Hal K. Waldman, Esquire, Suite 300, Dominion Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Christopher T. Lee, Esquire
Pa. I.D. #62422

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272


*Attorneys for Defendant, Beatty Restaurant
Enterprises, Inc., t/d/b/a McDonald's*

CERTIFICATE OF SERVICE

I, Christopher T. Lee, Esquire, hereby certify that true and correct copies of the foregoing Notice of Service of Answers to Plaintiff's Interrogatories and Contention Interrogatories and Request for Production of Documents Directed to Defendant McDonald's Corporation have been served this 18th day of November, 2005, by U.S. first-class mail, postage prepaid, to all counsel of record:

Hal K. Waldman, Esquire
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
Attorneys for Plaintiff

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Christopher T. Lee, Esquire

*Attorneys for Defendant, Beatty Restaurant
Enterprises, Inc., t/d/b/a McDonald's*

FILED

NOV 21 2005

William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

vs.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT
ENTERPRISES, INC. t/d/b/a
MCDONALD'S,

Defendants.

CIVIL DIVISION

No.: 2004 - 1053 - CD

MOTION TO COMPEL

Filed on Behalf of Plaintiffs

Counsel of Record for this Party

Timothy A. Montgomery
PA I.D. #: 94179

Hal K. Waldman & Associates
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

JURY TRIAL DEMANDED

FILED 2cc
m 12:37 PM
MAY 30 2006 Montgomery
CP

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.: 2004 - 1053 - CD
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

MOTION TO COMPEL

AND NOW, come the Plaintiffs, Peter Nakoski and Katherine Nakoski, his wife, by and through their attorneys, Hal K. Waldman, Esquire, and Timothy A. Montgomery, Esquire and Hal K. Waldman & Associates and file this Motion to Compel and in support aver as follows:

1. Defense Counsel requested, via telephone on September 14, 2004, that McDonald's Corporation be dismissed from this lawsuit. Plaintiffs' counsel stated that would be done only if, after receipt of the franchise agreement between McDonald's Corporation and Beatty Restaurant Enterprises, Inc. t/d/b/a McDonald's, Plaintiff's Counsel determined dismissal of McDonald's Corporation was warranted. Plaintiffs' Counsel's confirming letter to opposing counsel regarding said phone conversation is hereto attached as Exhibit 1.

2. On or about September 23, 2004 Plaintiffs' Counsel received a letter from the Defendant's indicating that "documentation" would be provided as soon as possible. A copy of Defense Counsel's letter is hereto attached as Exhibit 2.

3. On November 10, 2005, Judge Ammerman granted Plaintiffs' Motion to Compel full and complete "answers, documents and information responsive" to Plaintiffs' discovery. See Order of Court attached hereto as Exhibit 3.

4. The franchise agreement between the Defendant McDonald's and Defendant Beatty Restaurant Enterprises, Inc. t/d/b/a McDonald's is responsive to Plaintiffs' discovery requests, in particular to Request for Production #2, attached hereto as Exhibit 4.

5. On or about March 6, 2006 opposing counsel sent an affidavit from Geneace Williams of McDonald's concerning the relationship between Beatty Restaurant Enterprises, Inc. t/d/b/a McDonald's and McDonald's Corporation. However no franchise agreement was provided as requested.

6. On March 8, 2006 Plaintiffs' Counsel left a voice mail message with Counsel for the Defendant reiterating that a copy of the franchise agreement was needed before dismissal of McDonald's Corporation from the lawsuit would be considered.

7. On March 13, 2006, via telephone conversation, opposing counsel indicated he would "check on the franchise agreement."

8. To date, the Defendants have not provided a copy of the franchise agreement.

9. Accordingly, the Plaintiffs request that this Honorable Court enter an Order pursuant to Pa.R.C.P. 4019(a)(1)(i) compelling the Defendants to provide a copy of the franchise agreement within twenty (20) days.

10. In addition, because the Defendants have failed to provide full and complete responses to discovery requests as required by the Rules of Civil Procedure and the Order of this Honorable Court, in particular by producing the franchise agreement, despite being requested to do so on numerous occasions by Plaintiffs' Counsel, the Plaintiffs request that this Court enter an Order requiring the Defendants to pay a reasonable attorney fee of \$750 to the Plaintiffs for the cost and time associated with preparing and presenting this motion to compel as well as other sanctions deemed fitting by this Court.

WHEREFORE, the Plaintiffs respectfully request this Court enter an Order compelling the Defendants to provide full and complete answers, documents and information responsive to said discovery requests within twenty (20) days, including the franchise agreement and further requiring the Defendants to pay a reasonable attorney fee of \$750 to the Plaintiffs for the cost and time associated with preparing and presenting a motion to compel and additional sanctions as are deemed fitting by the Court.

Hal K. Waldman and Associates,

By: T A M
Timothy A. Montgomery, Esquire
Attorney for Plaintiffs

EXHIBIT 1

Hal K. Waldman and Associates

Attorneys At Law

DOMINION TOWER
Suite 300 • 625 Liberty Avenue
Pittsburgh, Pennsylvania 15222

1-800-350-4259

(412) 338-1000 • Fax: (412) 281-8055

E-mail: halwaldman@waldmaninc.com
www.waldmaninc.com

BUTLER, PA
(724) 282-4696

KITTANNING, PA
(724) 548-7377

SAXONBURG, PA
(724) 352-9666

September 14, 2004

Christopher T. Lee, Esquire
Dickie, McCamey & Chilcote
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

In Re: *Peter Nakoski vs. McDonald's Corporation, et al.*
No.: 04-1053-CD

Dear Mr. Lee:

It was a pleasure speaking with you this morning. Unfortunately, I must reiterate that we are not willing to release McDonald's Corporation from our lawsuit at this juncture.

As we discussed, our experience with the insurance company of your insured was less than productive and in fact resulted in unnecessary delay as well as what you will eventually come to see as needless litigation. This is a clear-cut case, wherein my client was severely injured through no fault of his own. Mr. Nakoski has undergone numerous dental surgeries and procedures as the result of your clients' negligence and recently has discovered he must undergo yet another apicoectomy surgery. He has had to treat with the emergency room, his primary care physician, an otolaryngologist and his oral surgeon within the last several months.

I trust that the insurance company has forwarded our demand package to you. Please understand that it does not reflect the above-described treatment course. You have asked us to let McDonald's Corporation out of this case. Please provide me with a copy of the franchise agreement and any other documentation you believe would support the corporation's release from this lawsuit.

Thank you for your time.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'H. K. Waldman', with a long horizontal flourish extending to the right.

Hal K. Waldman

TAB

Cc: Peter Nakoski

EXHIBIT 2

LAW OFFICES OF
DICKIE, MCCAMEY & CHILCOTE

A PROFESSIONAL CORPORATION

TWO PPG PLACE, SUITE 400
PITTSBURGH, PENNSYLVANIA
15222-5402

TEL. 412-281-7272
FAX. 412-392-5367

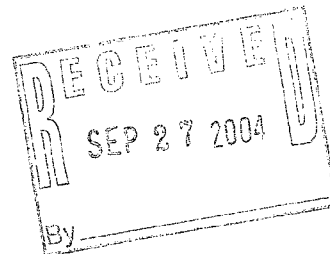
WWW.DMCLAW.COM

Christopher T. Lee
Attorney-at-Law

412-392-5402
lect@dmclaw.com

September 23, 2004

Hal K. Waldman, Esquire
Hal K. Waldman and Associates
Dominion Tower
625 Liberty Avenue, Suite 300
Pittsburgh, PA 15222



RE: Peter Nakoski and Katherine Nakoski v. McDonald's, et al.

Dear Mr. Waldman:

As a follow-up to conversation of September 14, 2004, I am reintegrating my request that you agreed to dismiss McDonald's Corporation from this matter. You requested that I provide you with some back up documentation regarding the fact that this particular restaurant was owned and operated by a franchise, specifically Beatty Restaurant Enterprises, Inc. I have requested that information and will provide it to you as soon as possible.

I appreciate your consideration of this request. Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'C. Lee'.

Christopher T. Lee

CTL:lam

HARRISBURG
717-731-4800

PHILADELPHIA
215-925-2289

WASHINGTON, D.C.
888-434-5566

NEW JERSEY
856-354-0192

NORTH CAROLINA
704-334-1108

OHIO
740-284-1682

WEST VIRGINIA
304-233-1022

EXHIBIT 3

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.: 2004 - 1053 - CD
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this 10 day of Nov., 2005, it
is hereby ORDERED and DECREED that the Defendants shall provide full and
complete answers, documents and information responsive to the Plaintiffs' said
discovery requests within ^{thirty (30)} ~~twenty (20)~~ days. ^{FJA/BJ}
~~and in addition Defendants shall pay-~~
~~counsel fees in the amount of \$750.00 to the Plaintiffs. — FJA/BJ~~

BY THE COURT:

/s/ Fredric J. Ammerman

_____. J.
I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 14 2005

Attest.

William B. Shaw
Prothonotary/
Clerk of Courts

EXHIBIT 4

28. Do you contend that the Plaintiff assumed a risk in the happening of the Incident? If so, please identify with particularity all of your facts in support of your contention.

ANSWER: Discovery is continuing. Defendant will supplement this Answer to Interrogatory in the event such information becomes available.

29. Please identify with particularity all of the facts and information you have in support of your contentions set forth in your New Matter, at paragraphs 28 through 36, filed in this action.

ANSWER: Discovery is continuing. Defendant will supplement this Answer to Interrogatory in the event such information becomes available.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Please produce all documents identified in response to the foregoing Interrogatories.

RESPONSE: See Exhibits A, B and C attached hereto.

2. Please produce all documents, including but not limited to, photographs, notes, reports, diagrams, illustrations, statements, videotapes, audiotapes, diaries, calendars, day planners, computer records, and correspondence concerning and/or otherwise relating to the allegations contained in the Plaintiff's Complaint, the claims arising therefrom, and any defenses or counterclaims claimed by the Defendant.

RESPONSE: Objection. This interrogatory seeks information protected from disclosure by the attorney-client privilege and work product doctrine. Defendant further objects on the grounds that the Request is overbroad, vague and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objections, see Response to Request Number 1 above.

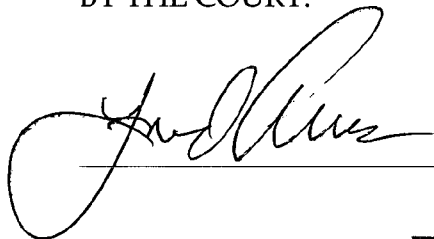
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.: 2004 - 1053 - CD
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this 31 day of May, 2006, it
is hereby ORDERED and DECREED that the Defendants shall provide Plaintiffs
with full and complete responses to Plaintiffs' discovery requests, particularly a
copy of the franchise agreement between McDonald's Corporation and Beatty
Restaurant Enterprises, Inc. t/d/b/a McDonald's, within ^{30 FSA} (20) days ~~and in~~
~~addition Defendants shall pay counsel fees in the amount of \$750.00 to the~~
~~Plaintiffs.~~ FSA

BY THE COURT:

 J.

FILED *2cc Amy*
013:00/01 montgomery
MAY 31 2006 *@*

William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAY 31 2006

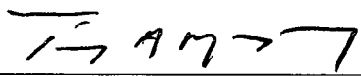
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Motion To Compel** has been served upon the following parties, via First Class Mail, Postage Pre-paid, this 25th day of May, 2006:

**Christopher T. Lee, Esquire
Dickie, McCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402**

Hal K. Waldman & Associates,

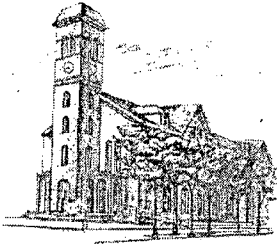
By: 
Timothy A. Montgomery, Esq.
Counsel for Plaintiffs

Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

FILED

MAY 30 2006

**William A. Shaw
Prothonotary/Clerk of Courts**



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 5/31/06

X You are responsible for serving all appropriate parties.

_____ The Prothonotary's office has provided service to the following parties:

_____ Plaintiff(s)/Attorney(s)

_____ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANTS ENTERPRISES,
INC., t/d/b/a MCDONALD'S,

Defendants.

CIVIL DIVISION

2004 - 1053- CD

Issue No.

MOTION FOR RECONSIDERATION

Code:

Filed on behalf of Defendants

Counsel of record for this party:

Christopher T. Lee, Esquire
PA I.D. # 62422

Shannon E. Smith, Esquire
PA I.D. # 92877

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED ^{icc}
JUN 12 2006 ^{Atty Smith}
(64)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	2004 - 1053- CD
Plaintiffs,)	
)	
v.)	
)	
McDONALD'S CORPORATION and)	
BEATTY RESTAURANTS)	
ENTERPRISES, INC., t/d/b/a)	
McDONALD'S,)	
)	
Defendants.)	

MOTION FOR RECONSIDERATION

AND NOW, comes the Defendants, McDonald's Corporation by and through its counsel Dickie, McCamey & Chilcote, P.C. and files the within Motion for Reconsideration to Plaintiff's Motion to Compel:

1. On or about May 25, 2006 Plaintiffs filed a Motion to Compel in the instant matter. A true and correct copy of the Motion to Compel is attached hereto as Exhibit A.

2. The Motion requested, among others, a copy of the McDonald's Corporation's Franchise Agreement. See Exhibit A, Paragraph 9.

3. Additionally, in Paragraph 10 of Plaintiff's Motion to Compel, Plaintiff requested "full and complete discovery responses." Paragraph 10 states "because the Defendants have failed to provide full and complete responses to discovery requests as required by the Rules of Civil Procedure and the Order of this Honorable Court, in particular by producing the franchise agreement, despite being requested to do so on numerous occasions by Plaintiffs' counsel, the Plaintiffs request that this Court enter an Order requiring the Defendants to pay a reasonable attorneys fee of \$750 to the Plaintiffs for the cost and time associated with preparing and

presenting this Motion to Compel as well as other sanctions deemed fitting by this Court.” See Exhibit A, Paragraph 10.

4. Plaintiff has failed to properly identify what “full and complete discovery responses” they are referring.

5. Plaintiffs have made no other requests for full and complete responses to their discovery requests. The Motion to Compel is the first request Plaintiff has made for more full and complete discovery responses.

6. Further, on or about May 31, 2006, Defendant hand delivered the franchise agreement to Plaintiffs’ counsel. A true and correct copy of this correspondence is attached hereto as Exhibit C.

7. Yet, even though Plaintiff’s Motion is unclear as to what “more full and complete discovery responses” they are referring and they received the franchise agreement via hand delivery, on May 31, 2006, this Court granted Plaintiffs’ Motion to Compel.

8. The Order of Court granting Plaintiffs’ Motion to Compel did not allow Defendant’s sufficient time to respond to Plaintiffs’ Motion. Defendants did not have an opportunity to respond, either by oral argument or by filing an opposition brief to Plaintiffs’ Motion to Compel

9. While this Defendant respects this Honorable Court’s ability to dispose of a Motion pursuant to Local Rule 28.3(b)(4)(A), Defendants respectfully requests that an argument be held on Plaintiffs’ Motion to Compel.


10. This Defendant has been severely prejudiced by Plaintiffs’ Motion.

11. Thus, Defendant's respectfully request that Plaintiffs' Motion to Compel is taken under reconsideration and this Defendant is entitled to either respond via oral argument and/or written brief.

WHEREFORE, Defendant respectfully requests that this Court grant the Motion for Reconsideration.

Respectfully submitted,

Dickie, McCamey & Chilcote, P.C.

By: 
Christopher T. Lee, Esquire
Shannon E. Smith, Esquire

Attorneys for Defendant, McDonald's Corporation

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

vs.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT
ENTERPRISES, INC. t/d/b/a
MCDONALD'S,

Defendants.

CIVIL DIVISION

No.: 2004 - 1053 - CD

MOTION TO COMPEL

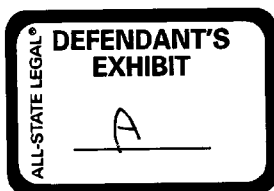
Filed on Behalf of Plaintiffs

Counsel of Record for this Party

Timothy A. Montgomery
PA I.D. #: 94179

Hal K. Waldman & Associates
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

JURY TRIAL DEMANDED



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE)	CIVIL DIVISION
NAKOSKI, his wife,)	
)	No.: 2004 - 1053 - CD
Plaintiffs,)	
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vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

MOTION TO COMPEL

AND NOW, come the Plaintiffs, Peter Nakoski and Katherine Nakoski, his wife, by and through their attorneys, Hal K. Waldman, Esquire, and Timothy A. Montgomery, Esquire and Hal K. Waldman & Associates and file this Motion to Compel and in support aver as follows:

1. Defense Counsel requested, via telephone on September 14, 2004, that McDonald's Corporation be dismissed from this lawsuit. Plaintiffs' counsel stated that would be done only if, after receipt of the franchise agreement between McDonald's Corporation and Beatty Restaurant Enterprises, Inc. t/d/b/a McDonald's, Plaintiff's Counsel determined dismissal of McDonald's Corporation was warranted. Plaintiffs' Counsel's confirming letter to opposing counsel regarding said phone conversation is hereto attached as Exhibit 1.

2. On or about September 23, 2004 Plaintiffs' Counsel received a letter from the Defendant's indicating that "documentation" would be provided as soon as possible. A copy of Defense Counsel's letter is hereto attached as Exhibit 2.

3. On November 10, 2005, Judge Ammerman granted Plaintiffs' Motion to Compel full and complete "answers, documents and information responsive" to Plaintiffs' discovery. See Order of Court attached hereto as Exhibit 3.

4. The franchise agreement between the Defendant McDonald's and Defendant Beatty Restaurant Enterprises, Inc. t/d/b/a McDonald's is responsive to Plaintiffs' discovery requests, in particular to Request for Production #2, attached hereto as Exhibit 4.

5. On or about March 6, 2006 opposing counsel sent an affidavit from Geneace Williams of McDonald's concerning the relationship between Beatty Restaurant Enterprises, Inc. t/d/b/a McDonald's and McDonald's Corporation. However no franchise agreement was provided as requested.

6. On March 8, 2006 Plaintiffs' Counsel left a voice mail message with Counsel for the Defendant reiterating that a copy of the franchise agreement was needed before dismissal of McDonald's Corporation from the lawsuit would be considered.

7. On March 13, 2006, via telephone conversation, opposing counsel indicated he would "check on the franchise agreement."

8. To date, the Defendants have not provided a copy of the franchise agreement.

9. Accordingly, the Plaintiffs request that this Honorable Court enter an Order pursuant to Pa.R.C.P. 4019(a)(1)(i) compelling the Defendants to provide a copy of the franchise agreement within twenty (20) days.

10. In addition, because the Defendants have failed to provide full and complete responses to discovery requests as required by the Rules of Civil Procedure and the Order of this Honorable Court, in particular by producing the franchise agreement, despite being requested to do so on numerous occasions by Plaintiffs' Counsel, the Plaintiffs request that this Court enter an Order requiring the Defendants to pay a reasonable attorney fee of \$750 to the Plaintiffs for the cost and time associated with preparing and presenting this motion to compel as well as other sanctions deemed fitting by this Court.

WHEREFORE, the Plaintiffs respectfully request this Court enter an Order compelling the Defendants to provide full and complete answers, documents and information responsive to said discovery requests within twenty (20) days, including the franchise agreement and further requiring the Defendants to pay a reasonable attorney fee of \$750 to the Plaintiffs for the cost and time associated with preparing and presenting a motion to compel and additional sanctions as are deemed fitting by the Court.

Hal K. Waldman and Associates,

By: T A M
Timothy A. Montgomery, Esquire
Attorney for Plaintiffs

EXHIBIT 1

Hal K. Waldman and Associates

Attorneys At Law

DOMINION TOWER
Suite 300 • 625 Liberty Avenue
Pittsburgh, Pennsylvania 15222

1-800-350-4259
(412) 338-1000 • Fax: (412) 281-8055

E-mail: halwaldman@waldmaninc.com
www.waldmaninc.com

BUTLER, PA
(724) 282-4696

KITTANNING, PA
(724) 548-7377

SAXONBURG, PA
(724) 352-9666

September 14, 2004

Christopher T. Lee, Esquire
Dickie, McCamey & Chilcote
Two PPG Place
Suite 400
Pittsburgh, PA 15222-5402

In Re: *Peter Nakoski vs. McDonald's Corporation, et al.*
No.: 04-1053-CD

Dear Mr. Lee:

It was a pleasure speaking with you this morning. Unfortunately, I must reiterate that we are not willing to release McDonald's Corporation from our lawsuit at this juncture.

As we discussed, our experience with the insurance company of your insured was less than productive and in fact resulted in unnecessary delay as well as what you will eventually come to see as needless litigation. This is a clear-cut case, wherein my client was severely injured through no fault of his own. Mr. Nakoski has undergone numerous dental surgeries and procedures as the result of your clients' negligence and recently has discovered he must undergo yet another apicoectomy surgery. He has had to treat with the emergency room, his primary care physician, an otolaryngologist and his oral surgeon within the last several months.

I trust that the insurance company has forwarded our demand package to you. Please understand that it does not reflect the above-described treatment course. You have asked us to let McDonald's Corporation out of this case. Please provide me with a copy of the franchise agreement and any other documentation you believe would support the corporation's release from this lawsuit.

Thank you for your time.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Hal K. Waldman', with a long horizontal flourish extending to the right.

Hal K. Waldman

TAB

Cc: Peter Nakoski

EXHIBIT 2

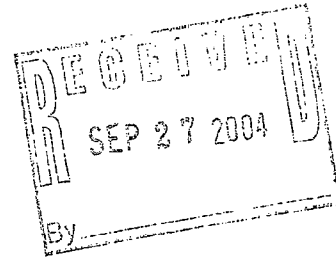
LAW OFFICES OF
DICKIE, MCCAMEY & CHILCOTE
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TWO PPG PLACE, SUITE 400
PITTSBURGH, PENNSYLVANIA
15222-5402
TEL. 412-281-7272
FAX. 412-392-5367
WWW.DMCLAW.COM

Christopher T. Lee
Attorney-at-Law

412-392-5402
leeet@dmclaw.com

September 23, 2004

Hal K. Waldman, Esquire
Hal K. Waldman and Associates
Dominion Tower
625 Liberty Avenue, Suite 300
Pittsburgh, PA 15222



RE: Peter Nakoski and Katherine Nakoski v. McDonald's, et al.

Dear Mr. Waldman:

As a follow-up to conversation of September 14, 2004, I am reintegrating my request that you agreed to dismiss McDonald's Corporation from this matter. You requested that I provide you with some back up documentation regarding the fact that this particular restaurant was owned and operated by a franchise, specifically Beatty Restaurant Enterprises, Inc. I have requested that information and will provide it to you as soon as possible.

I appreciate your consideration of this request. Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'C. Lee'.

Christopher T. Lee

CTL:lam

EXHIBIT 3

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.: 2004 - 1053 - CD
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this 10 day of Nov., 2005, it
is hereby ORDERED and DECREED that the Defendants shall provide full and
complete answers, documents and information responsive to the Plaintiffs' said
discovery requests within ~~twenty (20)~~ ^{thirty (30)} days ~~and in addition Defendants shall pay-~~ ^{FJA/BT}
~~counsel fees in the amount of \$750.00 to the Plaintiffs.~~ ^{FJA/BT}

BY THE COURT:

/s/ Fredric J. Ammerman

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 14 2005

Attest.

William B. Shaw
Prothonotary/
Clerk of Courts

EXHIBIT 4

28. Do you contend that the Plaintiff assumed a risk in the happening of the Incident? If so, please identify with particularity all of your facts in support of your contention.

ANSWER: Discovery is continuing. Defendant will supplement this Answer to Interrogatory in the event such information becomes available.

29. Please identify with particularity all of the facts and information you have in support of your contentions set forth in your New Matter, at paragraphs 28 through 36, filed in this action.

ANSWER: Discovery is continuing. Defendant will supplement this Answer to Interrogatory in the event such information becomes available.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Please produce all documents identified in response to the foregoing Interrogatories.

RESPONSE: See Exhibits A, B and C attached hereto.

2. Please produce all documents, including but not limited to, photographs, notes, reports, diagrams, illustrations, statements, videotapes, audiotapes, diaries, calendars, day planners, computer records, and correspondence concerning and/or otherwise relating to the allegations contained in the Plaintiff's Complaint, the claims arising therefrom, and any defenses or counterclaims claimed by the Defendant.

RESPONSE: Objection. This interrogatory seeks information protected from disclosure by the attorney-client privilege and work product doctrine. Defendant further objects on the grounds that the Request is overbroad, vague and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objections, see Response to Request Number 1 above.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.: 2004 - 1053 - CD
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2006, it is hereby ORDERED and DECREED that the Defendants shall provide Plaintiffs with full and complete responses to Plaintiffs' discovery requests, particularly a copy of the franchise agreement between McDonald's Corporation and Beatty Restaurant Enterprises, Inc. t/d/b/a McDonald's, within (20) days and in addition Defendants shall pay counsel fees in the amount of \$750.00 to the Plaintiffs.

BY THE COURT:

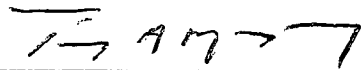
_____. J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Motion To Compel** has been served upon the following parties, via First Class Mail, Postage Pre-paid, this 25th day of May, 2006:

**Christopher T. Lee, Esquire
Dickie, McCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402**

Hal K. Waldman & Associates,

By: 
Timothy A. Montgomery, Esq.
Counsel for Plaintiffs

Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.: 2004 - 1053 - CD
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this 31 day of May, 2006, it
is hereby ORDERED and DECREED that the Defendants shall provide Plaintiffs
with full and complete responses to Plaintiffs' discovery requests, particularly a
copy of the franchise agreement between McDonald's Corporation and Beatty
Restaurant Enterprises, Inc. t/d/b/a McDonald's, within ³⁰~~(20)~~ ^{FJA/BN} days ~~and in~~
~~addition Defendants shall pay counsel fees in the amount of \$750.00 to the~~
~~Plaintiffs.~~ ^{FJA/BN}

BY THE COURT:

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

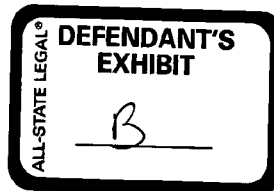
/s/ Fredric J. Ammerman

_____ J.

MAY 31 2006

Attest.

[Signature]
Prothonotary/
Clerk of Courts



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Motion To Compel** has been served upon the following parties, via First Class Mail, Postage Pre-paid, this 25th day of May, 2006:

Christopher T. Lee, Esquire
Dickie, McCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Hal K. Waldman & Associates,

By: Timothy A. Montgomery
Timothy A. Montgomery, Esq.
Counsel for Plaintiffs

Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

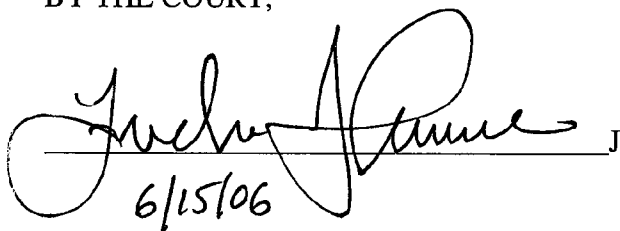
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	2004 - 1053- CD
Plaintiffs,)	
)	
v.)	
)	
McDONALD'S CORPORATION and)	
BEATTY RESTAURANTS)	
ENTERPRISES, INC., t/d/b/a)	
McDONALD'S,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, Defendant, McDonald's Corporation's Motion for Reconsideration is hereby GRANTED. Defendant, McDonald's Corporation will have twenty (20) days to prepare ^{FJA} a written brief to Plaintiffs' Motion to Compel and Oral Argument will be heard on the 19th of July, 2006 in Courtroom 1, at 9:00 a.m.

BY THE COURT,


6/15/06

FILED

JUN 16 2006
07355 Jccatt Smith
William A. Shaw
Prothonotary/Clerk of Courts (LM)

DATE: 6-16-2006

☐ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	2004 - 1053- CD
Plaintiffs,)	
)	
v.)	
)	
McDONALD'S CORPORATION and)	
BEATTY RESTAURANTS)	
ENTERPRISES, INC., t/d/b/a)	
McDONALD'S,)	
)	
Defendants.)	

PROPOSED SCHEDULING ORDER

AND NOW, this _____ day of _____, 2006, upon consideration of the foregoing Motion, it is hereby ordered that:

1. A rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;
2. The respondent shall file an answer to the Motion within ____ days of this date.
3. The motion shall be decided under Pa.R.C.P. 206.7;
4. Depositions and all other discovery shall be completed within ____ days of this date;
5. An evidentiary hearing on disputed issues of material fact shall be held on _____ in the Clearfield County Courthouse, Clearfield, Pennsylvania in Courtroom No. _____;
6. Argument shall be held on _____, in Courtroom No. _____ of the Clearfield County Courthouse;
7. Notice of the entry of this order shall be provided to all parties by the moving party.

BY THE COURT,


_____. J.

CERTIFICATE OF SERVICE

I, Shannon E. Smith, Esquire, hereby certify that true and correct copies of the foregoing MOTION FOR RECONSIDERATION have been served this 9th day of June, 2006, by U.S. first-class mail, postage pre-paid, to counsel of record listed below:

Hal K. Waldman
Hal K. Waldman & Associates
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, Pennsylvania 15222

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Shannon E. Smith, Esquire

Attorneys for McDonald's Corporation

FILED

JUN 12 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

v.

MCDONALD'S CORPORATION and
BEATTY RESTAURANTS ENTERPRISES,
INC., t/d/b/a MCDONALD'S,

Defendants.

CIVIL DIVISION

2004 - 1053- CD

Issue No.

MOTION FOR CONTINUANCE

Code:

Filed on behalf of Defendants

Counsel of record for this party:

Christopher T. Lee, Esquire
PA I.D. # 62422

Shannon E. Smith, Esquire
PA I.D. # 92877

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED *no cc*
012:10/5/06
JUL 18 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	2004 - 1053- CD
Plaintiffs,)	
)	
v.)	
)	
McDONALD'S CORPORATION and)	
BEATTY RESTAURANTS)	
ENTERPRISES, INC., t/d/b/a)	
McDONALD'S,)	
)	
Defendants.)	

MOTION FOR CONTINUANCE

AND NOW, comes the Defendants, McDonald's Corporation, by and through its counsel, Dickie, McCamey & Chilcote, P.C., and with the consent of Plaintiffs' counsel, files the within Motion for Continuance to reschedule the argument date for Defendant's Motion for Reconsideration:

1. On or about June 6, 2006, Defendants filed a Motion for Reconsideration in regard to Plaintiffs' Motion to Compel that was granted by this Honorable Court.
2. Thereafter, on or about June 16, 2006, the Court sent notice that Defendant's Motion for Reconsideration was granted.
3. Further, an Order of Court was attached which granted Defendant's twenty (20) days to prepare a written brief to Plaintiffs' Motion to Compel. The Order scheduled Oral Argument for July 19, 2006 in Courtroom 1 at 9:00am.
4. Due to an inadvertent error, counsel for Defendant, McDonald's Corporation, was unaware that an Order of Court was received and that the Motion for Reconsideration was scheduled for argument.

5. Counsel for Defendant, McDonald's Corporation, first discovered that notice had been sent after contacting the Prothonotary's office on July 17, 2006 to inquire as to the status of the Motion for Reconsideration.

6. Upon contacting the Prothonotary's office, counsel Defendant became aware that an Order of Court had been sent, scheduling an argument date.


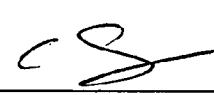
7. Counsel for Defendant, McDonald's Corporation, contacted Plaintiffs' counsel to discuss the situation. Plaintiffs' counsel willingly agreed and consented to continuing this argument until a later time.

8. Therefore, Defense counsel, with the consent of Plaintiffs' consent, respectfully requests that this Court grant the Motion for Continuance and reissue a Scheduling Order with regard to the Motion for Reconsideration.

WHEREFORE, Defendant, McDonald's Corporation respectfully requests that this Court grant the Motion for Continuance.

Respectfully submitted,

Dickie, McCamey & Chilcote, P.C.

By:  

Christopher T. Lee, Esquire
Shannon E. Smith, Esquire

Attorneys for Defendant, McDonald's Corporation

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE) CIVIL DIVISION
NAKOSKI, his wife,)
) 2004 - 1053- CD
Plaintiffs,)
)
v.)
)
McDONALD'S CORPORATION and)
BEATTY RESTAURANTS)
ENTERPRISES, INC., t/d/b/a)
McDONALD'S,)
)
Defendants.)

ORDER OF COURT

AND NOW, Defendant, McDonald's Corporation's Motion for Continuance is hereby GRANTED. Defendant, McDonald's Corporation will have twenty (20) days to prepare a written brief to Plaintiffs' Motion to Compel and Oral Argument will be heard on the 5th of September, 2006 in Courtroom 1, at 9:30 a.m.

BY THE COURT,

Frederick J. Cunningham J.
7-18-06

FILED 3cc
0/2:10/01 Amy Smith
JUL 18 2006 @

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/18/06

☒ You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) _____ Plaintiff(s) Attorney _____ Other _____

____ Defendant(s) _____ Defendant(s) Attorney _____

____ Special Instructions: _____

William A. Shaw
Prothonotary/Clerk of Courts

JUL 18 2006

FILED

CERTIFICATE OF SERVICE

I, Shannon E. Smith, Esquire, hereby certify that true and correct copies of the foregoing MOTION FOR CONTINUANCE have been served this 17th day of July, 2006, by U.S. first-class mail, postage pre-paid, to counsel of record listed below:

Hal K. Waldman
Hal K. Waldman & Associates
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, Pennsylvania 15222

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Shannon E. Smith, Esquire

Attorneys for McDonald's Corporation

FILED

JUL 18 2006

William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FILED ICC Attys:
0/3:30cm H. Waldman
C. Lee
SEP 06 2006 S. Smith

PETER NAKOSKI and
KATHERINE NAKOSKI

VS.

NO. 04-1053-CD William A. Shaw

Prothonotary/Clerk of Courts

MCDONALD'S CORPORATION and
BEATTY RESTAURANTS ENTERPRISES,
INC., t/d/b/a MCDONALD'S

ORDER

AND NOW, this 5th day of September, 2006, following argument on the Plaintiffs' Motion to Compel and the Defendants' Petition for Reconsideration of the same, it is the ORDER of this Court as follows:

1. Plaintiffs have withdrawn any objections relative answers to Interrogatory No. 1.
2. Plaintiffs shall have no more than twenty-five (25) days from this date in which to supply full and complete dental records of the Plaintiff up to date.
3. The Defense shall have no more than fifty-five (55) days from this date in which to provide full and complete answers to Interrogatories 25, 26, 27 and 29.
4. The Court notes that Defense has certified the answer to Interrogatory No. 28 is "No".

BY THE COURT



President Judge

DATE: 9-6-2006

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

FILED

SEP 06 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

CIVIL DIVISION

No. 2004 - 1053 - CD

**NOTICE OF SERVICE OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO PLAINTIFFS**

Filed on behalf of Defendants, McDonald's
Corporation and Beatty Restaurant Enterprises,
Inc., t/d/b/a McDonald's

Counsel of record for these parties:

Christopher T. Lee, Esquire
PA I.D. # 62422

DICKIE, MCCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED ^{NO CC}
m 11:14/61
SEP 18 2008 

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

CIVIL DIVISION

No. 2004 - 1053 - CD

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

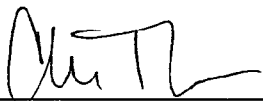
**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS**

TO: Clearfield County Prothonotary

Please be advised that I have served Interrogatories and Request for Production of Documents Directed to Plaintiffs on the following counsel of record: Hal K. Waldman, Esquire, Suite 300, Dominion Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Christopher T. Lee, Esquire
Pa. I.D. #62422

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

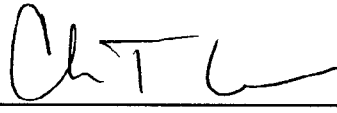
*Attorneys for Defendants, McDonald's
Corporation and Beatty Restaurant
Enterprises, Inc., t/d/b/a McDonald's*

CERTIFICATE OF SERVICE

I, Christopher T. Lee, Esquire, hereby certify that true and correct copies of the foregoing Notice of Service of Interrogatories and Request for Production of Documents Directed to Plaintiffs have been served this 14th day of September, 2006, by U.S. first-class mail, postage prepaid, to all counsel of record:

Hal K. Waldman, Esquire
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
Attorneys for Plaintiff

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Christopher T. Lee, Esquire

*Attorneys for Defendants, McDonald's
Corporation and Beatty Restaurant
Enterprises, Inc., t/d/b/a McDonald's*

FILED

SEP 18 2006

**William A. Shaw
Prothonotary/Clerk of Courts**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

CIVIL DIVISION

No. 2004 - 1053 - CD

Issue No.

MOTION FOR SUMMARY JUDGMENT

Code:

Filed on behalf of Defendant, McDonald's
Corporation

Counsel of record for this party:

Christopher T. Lee, Esquire
PA I.D. # 62422

DICKIE, MCCAMEY & CHILCOTE, P.C.

Firm #067

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED

NOV 03 2006

m/11:30/2
William A. Shaw
Prothonotary/Clerk of Courts

W C/C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

CIVIL DIVISION

No. 2004 - 1053 - CD

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

MOTION FOR SUMMARY JUDGMENT

AND NOW, comes the Defendant, McDonald's Corporation, by and through its counsel, Dickie, McCamey & Chilcote, P.C., and files the within Motion for Summary Judgment and in support thereof avers as follows:

1. Plaintiffs instituted this action by filing a Complaint on or about June 28, 2004.
2. Plaintiff alleges that on May 5, 2003, Plaintiff, Peter Nakoski, was injured while eating french fries purchased from the McDonald's Restaurant located at the Wal-Mart Plaza on Route 255 in DuBois, Clearfield County, Commonwealth of Pennsylvania.
3. Plaintiff alleges, *inter alia*, that he bit into a screw or other hard metal object in the french fries, causing severe, serious and permanent injuries to his teeth. Plaintiff further claims that the screw came from the french fryer.
4. Plaintiff filed a lawsuit against McDonald's Corporation ("McDonald's") and Beatty Restaurant Enterprises, Inc., t/d/b/a McDonald's ("Beatty").

5. McDonald's requests that this Court dismiss the claims against it on the basis that it did not own, control or maintain the subject restaurant and fryer which are the subject of this lawsuit.

6. Pennsylvania Rule of Civil Procedure 1035.2 establishes that a Motion for Summary Judgment may be granted "if after the completion of discovery relevant to the Motion, including the production of expert reports, [the] party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury." *Pa. R.C.P. 1035*. Plaintiff has failed to set forth any evidence, whatsoever, that McDonald's Corporation should be a party in this matter.

7. In Beatty Restaurant's Answer and New Matter, specifically, Paragraph 8, it is specifically admitted that Defendant Beatty owned, operated and controlled the subject restaurant at the time of the alleged incident. Indeed, Beatty acknowledges that it maintained the french fryer, which is the subject of this lawsuit.

8. Further, an Affidavit was introduced by managing counsel of McDonald's Corporation, setting forth that McDonald's does not own, control, maintain or have an ownership interest in this restaurant. See Exhibit A (which includes the Franchise Agreement between McDonald's and Beatty).

9. In this regard, and as set forth in Attorney Williams' Affidavit, McDonald's Corporation did not:

- a. own the restaurant;
- b. operate the business specified above;
- c. have the right to, hire, discharge or discipline employees of Beatty;
- d. pay the utilities for the restaurant;

- e. sell any product at or to Beatty;
- f. file a tax return for or on behalf of the restaurant;
- g. manufacture, process or prepare any product for sale at the restaurant;
- h. supply any product, nor did it own or operate any business which supplies product to the restaurant; and
- i. control the day-to-day activities necessary to carrying on the business operations of the restaurant.

See Exhibit A.

10. The aforementioned facts are also confirmed by Beatty Restaurant's discovery responses.

11. Specifically, Beatty Restaurants produced documents, attached hereto as Exhibit "B", which specifically notes that it owns the restaurant and that it maintains a policy of insurance that has a limit of one million dollars per person for loss for the applicable time frame.


12. As such, Beatty Restaurant has (1) admitted that they were the owner and operator of said restaurant at the time of the incident, (2) taken full responsibility for any and all negligence that may have occurred on the day of the alleged incident, and (3) maintains insurance coverage in the amount of one million dollars per person lost with regard to said restaurant. Further, McDonald's has produced an Affidavit and the Franchise Agreement with Beatty showing that it has no ownership interest or control over the subject restaurant and fryer.

13. Accordingly, McDonald's Corporation respectfully requests that this Honorable Court grant the same.

WHEREFORE, this Defendant, McDonald's Corporation respectfully requests that this Court enter summary judgment in its favor and dismiss Plaintiffs claim against McDonald's Corporation with prejudice.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Christopher T. Lee, Esquire
Pa. I.D. #62422

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

*Attorneys for Defendant, McDonald's
Corporation*

LAW OFFICES OF
DICKIE, MCCAMEY & CHILCOTE
A PROFESSIONAL CORPORATION

TWO PPG PLACE, SUITE 400
PITTSBURGH, PENNSYLVANIA
15222-5402

TEL. 412-281-7272
FAX. 412-392-5367
WWW.DMCLAW.COM

Christopher T. Lee
Attorney-at-Law
Admitted in PA

Direct Dial: 412-392-5402
Direct Fax: 412-392-5367
clee@dmclaw.com

May 31, 2006

Via Hand Delivery

Hal K. Waldman, Esquire
Hal K. Waldman & Associates
Suite 300 Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222

RE: Nakoski v. McDonald's
Our File No.: 51786 / 284697

Dear Mr. Waldman:

Enclosed please find the following documents:

1. Affidavit of Geneace Williams of McDonald's Corporation;
2. Assignment and Consent to Assignment of Franchise to a Corporation;
3. Franchise Agreement; and
4. Exhibit A to Franchise Agreement.

Very truly yours,



Christopher T. Lee

CTL:pag

Enclosures

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE)	
NAKOSKI, his wife,)	
)	
PLAINTIFF,)	
)	
v.	)	NO.
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
DEFENDANT.)	

AFFIDAVIT

Personally appeared before the undersigned officer duly authorized by law to administer oaths, Geneace Williams, who, after being sworn, deposes and states that the statements set forth below are true and correct and based upon her personal knowledge gained through file reviews and investigation of McDonald's employees. The statements contained in this Affidavit are true as of this date and were true on May 5, 2003.

1. My name is Geneace Williams. I am employed by McDonald's Corporation as Managing Counsel, and I am authorized to give this affidavit on behalf of McDonald's Corporation.

2. The plaintiff(s) brought a lawsuit against McDonald's Corporation alleging damages for an injury sustained at the McDonald's restaurant located at SR 255 Walmart Plaza, Du Bois, PA 15801, on May 5, 2003.

3. McDonald's Corporation did not own the business specified above.

4. McDonald's Corporation did not operate the business specified above.

5. McDonald's Corporation did not, nor did it have the right to, hire, discharge or discipline employees of the business specified above.

6. McDonald's Corporation did not pay the utilities for the business specified above.

7. McDonald's Corporation did not sell any product at or to the business specified above.

8. McDonald's Corporation did not file a tax return for or on behalf of the business specified above.

9. McDonald's Corporation did not manufacture, process or prepare any product for sale at the business specified above.

10. McDonald's Corporation did not supply any product, nor did it own or operate any business which supplies product to the business specified above.

11. McDonald's Corporation did not, nor did it have the right to, control the day-to-day activities necessary to carrying on the business operations of the restaurant specified above.

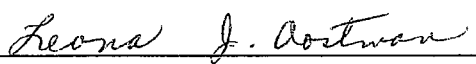
12. At the time of the alleged incident, the restaurant business specified above was owned and operated by Beatty Restaurant Enterprises, Inc. pursuant to the terms of a franchise agreement dated April 29, 1993.

This the 1 day of October, 2004.



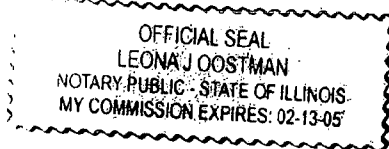
Geneace Williams

Sworn to and subscribed before me, this the
1 day of October, 2004



Notary Public

My Commission Expires:



ASSIGNMENT AND CONSENT TO ASSIGNMENT
OF FRANCHISE TO A CORPORATION

Parties: McDonald's Corporation ("McDonald's"), dba
Delaware McDonald's Corporation

Fredric E. Beatty

Carolyn S. Beatty (Collectively
referred to as "Assignor");

Beatty Restaurant Enterprises, Inc. ("Assignee")
a NEW YORK Corporation;

and those shareholders listed on Exhibit A attached hereto and hereby
made a part hereof (collectively referred to as "Shareholders")

Date: MAY 20 1993

WHEREAS, McDonald's or its predecessors granted a franchise to
Assignor, including a License Agreement or Franchise Agreement dated
April 29, 1993, ("License") and an Operator's Lease dated
April 29, 1993, ("Lease"), for the purpose of operating a McDonald's
restaurant located at State Route 255, DUBOIS, PENNSYLVANIA
("Restaurant");

WHEREAS, Assignor desires to transfer the rights in the franchise,
including the License and Lease, ("Franchise") to the Assignee; and

WHEREAS, the parties acknowledge this consent is necessary to insure
the ability of McDonald's to have the type of operators who will operate the
Restaurant business consistent with McDonald's image in the specific community
and in the nation as a whole of having a wholesome atmosphere attractive to children
and families.

NOW, THEREFORE, to induce McDonald's to execute this Assignment
and Consent to Assignment of Franchise to a Corporation ("Assignment"), and in
consideration of the premises, promises, covenants, warranties and representations
herein contained, the parties agree as follows:

1. Assignor, in consideration of \$10.00 and other good and valuable
consideration, hereby assigns, transfers and sets over to Assignee all the right, title
and interest of Assignor in and to the Franchise, subject to the terms and conditions
of the Franchise.

2. The effective date of the Assignment shall be upon the opening
date of the restaurant.

3. Assignee hereby covenants and agrees to pay all fees and will
perform all the terms and conditions of the Franchise.

4. Assignor is in no way discharged from personal liability to McDonald's by this Assignment and Assignor specifically agrees to remain personally liable for the full and faithful performance of the agreements and covenants of the Franchise.

5. Assignor, Assignee and Shareholders, jointly and severally, agree, represent and warrant that they shall not make or permit any direct or indirect subsequent assignment or hypothecation of the Franchise, whether voluntarily or by operation of law, without the prior written consent of McDonald's given in accordance with the Franchise and this Assignment.

6. In addition to the above covenants, Assignor and Assignee agree that if any trusts are shareholders of shares of stock of Assignee that:

(a) The beneficial interests in said trusts shall not be assigned without the prior written consent of McDonald's and shall be in accordance with the terms of this Assignment and the License.

(b) Assignor and Assignee warrant that the Trust Agreement supplied to McDonald's is a true and correct copy of the Trust Agreement as it is presently in force. Assignor and Assignee agree not to make any amendments to the Trust Agreement without first giving McDonald's an opportunity to review and approve same.

7. Since the transfer of an interest in the Assignee will in substance constitute an assignment of the Franchise, which Assignor and Assignee have agreed not to transfer except in accordance with certain restrictions, Assignor, Assignee and each Shareholder, jointly and severally, further represent and warrant that: (i) they are the only persons and/or entities with equity interests in Assignee; (ii) the extent of such equity interests are as set forth on Exhibit A attached hereto; (iii) there are no obligations or intentions to issue additional equity interests in Assignee; and (iv) the only persons having a beneficial interest in any trust shareholder are as listed in Exhibit A attached hereto. Assignee and each Shareholder, jointly and severally, agree they shall not make or permit, directly or indirectly, the creation of new or additional equity interests in Assignee or make or permit any subsequent assignment or transfer thereof, or of any issued and outstanding equity interests either voluntarily or by operation of law, including, but not limited to: (a) transfers to successor trustees whether or not such transfer may already be provided for in any Trust Agreement under which any trustee shareholder derives its authority; and (b) any hypothecation or other encumbrance of such equity interest without the written consent of McDonald's first had and obtained in accordance with the provisions of the Franchise and this Assignment. Permanent incapacity of any Shareholder shall be deemed to be a transfer by operation of law for purposes of this Assignment. As used herein the term "equity interest(s)" shall include direct or indirect interests in the equity of the Assignee or the business risk of the Restaurant, including, but not limited to, interests allegedly denominated as debt but which in substance encompass the type of risk-taking interest described herein or any interest in the profits of the Restaurant.

8. McDonald's hereby consents to the assignment of the Franchise to Assignee as required by the Franchise upon the following conditions only:

(a) McDonald's has been induced to execute this Assignment by the agreements, representations and warranties executed and undertaken by Assignor, Assignee and Shareholders as set forth herein.

(b) The granting of this consent is in no way either an approval by McDonald's of the corporate charter or any other documents pertaining to Assignee and insofar as the terms of same may conflict with or contradict the terms of this Assignment said terms are expressly disclaimed.

(c) Assignor and/or Assignee shall legend all issued and outstanding shares of stock of Assignee and future issues of shares of stock of Assignee with the following legend:

This stock may not be pledged, sold, assigned or otherwise transferred, in whole or in part, voluntarily or by operation of law, without the prior written consent of McDonald's Corporation. Any and all transfers are also subject to the terms of the Franchise, including the License Agreement or Franchise Agreement and Operator's Lease, or other applicable agreements, for each McDonald's restaurant operated by Beatty Restaurant Enterprises, Inc.

(d) The granting of this consent to a trust shareholder is not a consent to any proposed future transfers of shares of stock of Assignee to beneficiaries upon the attainment of a certain age or other condition. Any and all future transfers or vesting of shares of stock of Assignee are subject to the terms of paragraph 8 below.

(e) The granting of this consent is in no way an approval of any terms of the Trust Agreement and insofar as said terms may conflict with or contradict the terms of this Assignment, they are expressly disclaimed.

9. The parties agree that in determining whether to grant or to withhold consent to the transfer (whether voluntary or by operation of law) of an interest in Assignee or the Franchise, at any future date, McDonald's shall consider of each prospective transferee, by way of illustration and not limitation, the following: (i) work experience and aptitude; (ii) financial background; (iii) character; (iv) ability to personally devote full time and best efforts to managing the Restaurant; (v) residence in the locality of the Restaurant; (vi) equity interest in the Restaurant; (vii) conflicting interests; (viii) whether or not, in McDonald's sole determination, the transferee intends to be active in the operations of the Restaurant; and (ix) such other criteria and conditions as McDonald's shall then apply in the case of an application for a new franchise to operate a McDonald's restaurant. Upon request to transfer the Franchise or an interest in Assignee, McDonald's consent to such transfer shall also be conditioned each upon such transferee's execution of an agreement by which he personally assumes full and unconditional liability for and agrees to perform from the date of such transfer all obligations, covenants and agreements contained in this Assignment to the same extent as if he had been an original party to this Assignment.

10. Granting consent to this Assignment does not constitute approval of any Shareholder as an approved owner/operator. However, Assignee and each Shareholder hereby covenant and agree to abide by and honor, as if Assignee and each Shareholder were a signatory thereto, those provisions of the License pertaining to the maintenance and protection of the McDonald's System, including, but not limited to, those provisions imposing duties of confidentiality and regulating involvement in other or similar restaurant businesses according to the terms of the License. Assignee and each Shareholder agree that a breach of this covenant shall constitute a breach of the License and entitle McDonald's to enforce all remedies available to it, including, but not limited to, the termination of the License.

11. The parties' respective successors, assigns, heirs and personal representatives shall be bound by and receive the benefits of this Assignment. All obligations, agreements, representations and warranties made by more than one party herein shall be joint and several whether or not so stipulated in the relevant paragraph herein.

12. Assignor, Assignee and Shareholders agree that McDonald's at any time during normal business hours may examine, review and copy any and all of each of their records, books, financial records, tax returns or other documents for the purpose of insuring compliance with the Franchise and this Assignment.

13. Assignor, Assignee and each Shareholder agree that upon breach of the conditions, representations, agreements or warranties contained herein, they and each of them shall be subject, among all other remedies available by law or hereunder, to all relief and remedies granted to McDonald's by the Franchise.

14. Assignor represents and warrants that Assignor has notified any and all of Assignor's lienholders/lenders of this Assignment.

15. All terms and conditions of the Franchise remain in full force and effect, including, but not limited to, the requirement imposed on Fredric E. Beatty to personally devote full time and best efforts to the operation of the Restaurant business.

IN WITNESS WHEREOF, the parties set their hands and seals effective the date set forth above.

McDONALD'S CORPORATION, DBA
DELAWARE McDONALD'S CORPORATION

By:

Eugene Stachowiak
Eugene Stachowiak
Assistant Vice President - Franchising

ASSIGNOR:

Fredric E. Beatty
Fredric E. Beatty

Carolyn S. Beatty
Carolyn S. Beatty

ASSIGNEE: Beatty Restaurant
Enterprises, Inc.

By:

Fredric E. Beatty
President

SHAREHOLDERS:

Fredric E. Beatty
Fredric E. Beatty
Carolyn S. Beatty
Carolyn S. Beatty

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EXHIBIT A

LISTING OF SHAREHOLDERS OF ASSIGNEE

<u>NAME</u>	<u>(IF TRUST BENEFICIARIES) RELATION TO ASSIGNOR</u>	<u>PERCENTAGE OWNERSHIP</u>
Fredric E. Beatty <i>FE</i>		
Carolyn S. Beatty <i>CS</i>		100% Joint

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Franchise") made this 29th day of April, 1993, for the operation of a McDonald's restaurant located at State Route 255, DUBOIS, PENNSYLVANIA (the "Restaurant") by and between:

**MCDONALD'S CORPORATION, DBA
DELAWARE MCDONALD'S CORPORATION**
a Delaware corporation,

("McDonald's")

and

Fredric E. Beatty

Carolyn S. Beatty

("Licensee")

for the purpose of granting the Licensee the rights necessary to operate the Restaurant.

In consideration of the mutual rights and obligations contained herein McDonald's and Licensee agree as follows:

1. Nature and Scope of Franchise.

(a) McDonald's has developed and operates a restaurant system ("McDonald's System"). The McDonald's System is a comprehensive system for the ongoing development, operation and maintenance of McDonald's restaurant locations which have been selected and developed by McDonald's for the retailing of a limited menu of uniform and quality food products, emphasizing prompt and courteous service in a clean, wholesome atmosphere which is intended to be attractive to children and families and includes proprietary rights in certain valuable trade names, service marks and trademarks, including the trade names "McDonald's" and "McDonald's Hamburgers," designs and color schemes for restaurant buildings, signs, equipment layouts, formulas and specifications for certain food products, methods of inventory and operation control, bookkeeping and accounting, and manuals covering business practices and policies. The McDonald's System is operated and is advertised widely within the United States of America and in certain foreign countries.

(b) McDonald's holds the right to authorize the adoption and use of the McDonald's System at the Restaurant. The rights granted to the Licensee to operate the Restaurant are set forth in this Franchise, including the Operator's Lease ("Lease") which is attached hereto as Exhibit A, incorporated herein and hereby made a part hereof.

(c) The foundation of the McDonald's System and the essence of this Franchise is the adherence by Licensee to standards and policies of McDonald's providing for the uniform operation of all McDonald's restaurants within the McDonald's System including, but not limited to, serving only designated food and beverage products; the use of only prescribed equipment and building layout and designs; strict adherence to designated food and beverage specifications and to McDonald's prescribed standards of Quality, Service and Cleanliness in Licensee's restaurant operation. Compliance by Licensee with the foregoing standards and policies in conjunction with the McDonald's trademarks and service marks provides the basis for the valuable good will and wide family acceptance of the McDonald's System. Moreover, the establishment and maintenance of a close personal working relationship with McDonald's in the conduct of his McDonald's restaurant business, his accountability for performance of the obligations contained in this Franchise, and his adherence to the tenets of the McDonald's System constitute the essence of this Franchise.

(d) The provisions of this Franchise shall be interpreted to give effect to the intent of the parties stated in this paragraph 1 so that the Restaurant shall be operated in conformity to the McDonald's System through strict adherence to McDonald's standards and policies as they exist now and as they may be from time to time modified.

(e) Licensee acknowledges his understanding of McDonald's basic business policy that McDonald's will grant licenses only to those individuals who live in the locality of their McDonald's restaurant, actually own the entire equity interest in the business of the Restaurant and its profits, and who will work full-time at their McDonald's restaurant business. Licensee represents, warrants, and agrees that he actually owns the complete equity interest in this Franchise and the profits from the operation of the Restaurant, and that he shall maintain such interest during the term of this Franchise except only as otherwise permitted pursuant to the terms and conditions of this Franchise. Licensee agrees to furnish McDonald's with such evidence as McDonald's may request, from time to time, for the purpose of assuring McDonald's that Licensee's interest remains as represented herein.

(f) Licensee agrees to pay to McDonald's all required payments under this Franchise, including, without limitation, the payments set forth in paragraphs 8 and 9 herein and paragraph 3.01 of the Lease. In addition, Licensee shall make a non-interest bearing security deposit in the amount set forth in paragraphs 1.03 and 3.07 of the Lease. All payments hereby required constitute a single financial arrangement between Licensee and McDonald's which, taken as a whole and without regard to any designation or descriptions, reflect the value of the authorization being made available to the Licensee by McDonald's in this Franchise and the services rendered by McDonald's during the term hereof.

2. *License Grant and Term.*

(a) McDonald's grants to Licensee for the following stated term the right, license, and privilege:

- (i) to adopt and use the McDonald's System at the Restaurant;
- (ii) to advertise to the public that he is a licensee of McDonald's;
- (iii) to adopt and use, but only in connection with the sale of those food and beverage products which have been designated by McDonald's at the Restaurant, the trade names, trademarks and service marks which McDonald's shall designate, from time to time, to be part of the McDonald's System; and
- (iv) to occupy the Restaurant as provided herein.

The rights granted under this Franchise are limited to the Restaurant's location only.

(b) The term of the Franchise shall begin on the opening date of the Restaurant and end twenty (20) years thereafter, but in no event later than April 28, 2014, unless terminated prior thereto pursuant to the provisions hereof.

3. *General Services of McDonald's.* McDonald's shall advise and consult with Licensee periodically in connection with the operation of the Restaurant and also, upon Licensee's request, at other reasonable times. McDonald's shall communicate to Licensee its know-how, new developments, techniques and improvements in areas of restaurant management, food preparation, and service which are pertinent to the operation of a restaurant using the McDonald's System. The communications shall be accomplished by visits by Field Consultants, printed and filmed reports, seminars, and newsletter mailings. McDonald's shall also make available to Licensee all additional services, facilities, rights and privileges relating to the operation of the Restaurant which McDonald's makes generally available, from time to time, to all its licensees operating McDonald's restaurants.

4. *Manuals.* McDonald's shall provide Licensee with the business manuals prepared by McDonald's for use by licensees of McDonald's restaurants similar to the Restaurant to be operated by Licensee. The business manuals contain detailed information including: (a) required operations procedures; (b) methods of inventory control; (c) bookkeeping and accounting procedures; (d) business practices and policies; and (e) other management, advertising, and personnel policies. Licensee agrees to promptly adopt and use exclusively the formulas, methods and policies contained in the business manuals, now and as they may be modified by McDonald's from time to time. Licensee acknowledges that McDonald's is the owner of all proprietary rights in and to the McDonald's System and that the information revealed in the business manuals, in their entirety, constitute confidential trade secrets. Without the prior written consent of McDonald's, Licensee shall not disclose the contents of the business manuals to any person, except employees of Licensee for purposes related solely to the operation of the Restaurant, nor shall Licensee reprint or reproduce the manuals in whole or in part for any purpose except in connection with instruction of employees in the operation of Licensee's Restaurant. Such manuals, as modified by McDonald's from time to time, and the policies contained therein, are incorporated in this Franchise by reference.

5. **Advertising.** McDonald's employs both public relations and advertising specialists who formulate and carry out national and local advertising programs for the McDonald's System.

Licensee shall use only advertising and promotional materials and programs provided by McDonald's or approved in advance, in writing, by McDonald's. Neither the approval by McDonald's of Licensee's advertising and promotional material nor the providing of such material by McDonald's to Licensee shall, directly or indirectly, require McDonald's to pay for such advertising or promotion.

Licensee shall expend during each calendar year for advertising and promotion of the Restaurant to the general public an amount which is not less than four percent (4%) of his Gross Sales (as that term is defined in Paragraph 7) for such year. Expenditures by Licensee to national and regional cooperative advertising and promotion of the McDonald's System, or to a group of McDonald's restaurants which includes the Restaurant, shall be a credit against the required minimum expenditures for advertising and promotion to the general public.

6. **Training.** McDonald's shall make available to Licensee the services of Hamburger University, the international training center for the McDonald's System. Licensee acknowledges the importance of quality of business operation among all restaurants in the McDonald's System and agrees to enroll himself and his managers, present and future, at Hamburger University or at such other training center as may be designated by McDonald's from time to time. McDonald's shall bear the cost of maintaining Hamburger University and any other training centers, including the overhead costs of training, staff salaries, materials and all technical training tools and agrees to provide to Licensee both basic and advanced instruction for the operation of a McDonald's System restaurant. Licensee shall pay all traveling, living, compensation or other expenses incurred by Licensee and his employees in connection with attendance at Hamburger University or such other training centers.

7. **Gross Sales.** For the purposes of this Agreement, the term "Gross Sales" shall mean all revenues from sales of the Licensee based upon all business conducted upon or from the Restaurant, whether such sales be evidenced by check, cash, credit, charge account, exchange or otherwise, and shall include, but not be limited to, the amounts received from the sale of goods, wares and merchandise, including sales of food, beverages and tangible property of every kind and nature, promotional or otherwise and for services performed from or at the Restaurant, together with the amount of all orders taken or received at the Restaurant, whether such orders be filled from the Restaurant or elsewhere. Gross Sales shall not include sales of merchandise for which cash has been refunded, provided that such sales shall have previously been included in Gross Sales. There shall be deducted from Gross Sales the price of merchandise returned by customers for exchange, provided that such returned merchandise shall have been previously included in Gross Sales, and provided that the sales price of merchandise delivered to the customer in exchange shall be included in Gross Sales. Gross Sales shall not include the amount of any sales tax imposed by any federal, state, municipal or other governmental authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein, and actually paid by the Licensee to such governmental authority. Each charge or sale upon credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time when the Licensee shall receive payment (whether full or partial) therefor.

8. **Service Fee.** Licensee shall pay a semi-monthly service fee on or before the 1st and 16th day of each month in an amount equal to three and one-half percent (3.5%) of the Gross Sales of the Restaurant for the respective preceding half-month periods immediately ended. Delinquent service fees shall bear simple interest after the respective dates thereof until paid at the highest interest rate allowed by law or if there is no maximum rate permitted by law, at 15% per annum.

9. **Initial Fee.** Licensee acknowledges that: (a) the initial grant of this Franchise constitutes the sole consideration for the payment of an Initial Fee of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) paid by Licensee to McDonald's; and (b) the fee has been earned by McDonald's (except where the construction of the Restaurant has not been completed within one year from the date of the execution and delivery of this Franchise). If the Restaurant has not been constructed or is not ready for occupancy at the time of the execution of this Franchise, McDonald's shall use

its best efforts to expedite the construction and lease of the Restaurant to Licensee. However, McDonald's shall not be liable to Licensee in any manner for any delays in or lack of completion of such construction for any reason. McDonald's shall be under no obligation to enforce performance or to seek other remedies for non-performance of any lease, clause or contract necessary for the construction of the Restaurant and reserves the right, in case construction of the Restaurant should be abandoned, the lease assigned, or other interest in the premises be relinquished, to terminate this Franchise upon reimbursement to Licensee of the Initial Fee. At such time as the Restaurant is completed and ready for occupancy the Initial Fee shall be deemed to be earned. If the Restaurant is not ready for occupancy within one year from the date of this Franchise, Licensee shall have the right to terminate this Franchise and obtain an immediate refund of the Initial Fee upon written request to McDonald's.

10. **Reports.** On or before the 1st and 16th day of each month, Licensee shall render to McDonald's a statement, in such form as McDonald's shall reasonably require from time to time, of all receipts from the operation of the Restaurant for the respective preceding half-month periods immediately ended. On or before the twenty-fifth (25th) day of each month Licensee shall submit to McDonald's an operating statement and a statistical report for the previous month in form satisfactory to McDonald's. Licensee shall keep and preserve full and complete records of Gross Sales for at least three years in a manner and form satisfactory to McDonald's and shall also deliver such additional financial, operating and other information and reports as McDonald's may reasonably request on the forms and in the manner prescribed by McDonald's. Licensee further agrees to submit within ninety (90) days following the close of each fiscal year of his Restaurant's operation, a profit and loss statement covering operations during such fiscal year and a balance sheet taken as of the close of such fiscal year, all prepared in accordance with generally accepted accounting principles. The profit and loss statement and the balance sheet shall, if McDonald's shall request certification, be certified by a certified public accountant. Licensee shall at his expense cause his public accountant and certified public accountant, if any, to consult with McDonald's concerning such statement and balance sheet. The original of each such report required by this paragraph 10 shall be mailed to McDonald's at the address indicated in paragraph 22 herein.

McDonald's shall have the right to inspect and/or audit Licensee's accounts, books, records and tax returns at all reasonable times to insure that Licensee is complying with the terms of the Franchise. If such inspection discloses that Gross Sales actually exceeded the amount reported by Licensee as his Gross Sales by an amount equal to two percent (2%) or more of Gross Sales originally reported to McDonald's, Licensee shall bear the cost of such inspection and audit.

11. **Restrictions.** Licensee agrees and covenants as follows:

(a) During the term of this Franchise, Licensee shall not, without the prior written consent of McDonald's, directly or indirectly, engage in, acquire any financial or beneficial interest (including interests in corporations, partnerships or trusts, unincorporated associations and joint ventures) in, or become a landlord for any restaurant business, which is similar to the Restaurant operated by the Licensee.

(b) Licensee shall not, for a period of 18 months after termination of this Franchise for any reason or the sale of the Restaurant, directly or indirectly, engage in or acquire any financial or beneficial interest (including any interest in corporations, partnerships or trusts, unincorporated associations and joint ventures) in, or become a landlord of any restaurant business which is similar to the Restaurant operated by the Licensee within a ten-mile radius of said Restaurant.

(c) Licensee shall not appropriate, use, or duplicate the McDonald's System, or any portion thereof, for use at any other self-service, carry-out or other similar restaurant business.

(d) Licensee shall not disclose or reveal any portion of the McDonald's System to a non-licensee other than to his Restaurant employees as an incident of their training.

(e) Licensee shall acquire no right to use, or to license the use of, any name, mark or other intellectual property right granted or to be granted herein, except in connection with the operation of the Restaurant.

The restrictions contained in paragraphs 11(a) and (b) herein shall not apply to ownership of less than two percent (2%) of the shares of a company whose shares are listed and traded on a national or regional securities exchange.

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12. **Compliance with Entire System.** Licensee acknowledges that every component of the McDonald's System is important to McDonald's and to the operation of the Restaurant as a McDonald's restaurant, including a designated menu of food and beverage products; uniformity of food specifications, preparation methods, quality and appearance; and uniformity of facilities and service.

McDonald's shall have the right to inspect the Restaurant at all reasonable times to ensure that Licensee's operation thereof is in compliance with the standards and policies of the McDonald's System.

Licensee shall comply with the entire McDonald's System, including, but not limited to, the following:

(a) Operate the Restaurant in a clean, wholesome manner in compliance with prescribed standards of Quality, Service, and Cleanliness; comply with all business policies, practices and procedures imposed by McDonald's; serve at the Restaurant only those food and beverage products now or hereafter designated by McDonald's; and maintain the building, equipment, signage, seating and decor and parking area, in a good, clean, wholesome condition and repair, and well lighted and in compliance with designated standards as may be prescribed from time to time by McDonald's;

(b) Purchase kitchen fixtures, lighting and other equipment, seating, and signs in accordance with the equipment specifications and layout initially designated by McDonald's, and, promptly after notice from McDonald's that the Restaurant premises are ready for occupancy, cause the installation thereof;

(c) Keep the Restaurant constructed and equipped in accordance with the building blueprints and equipment layout plans that are standard in the McDonald's System or as such blueprints and plans may be reasonably changed from time to time by McDonald's;

(d) Licensee shall not, without the prior written consent of McDonald's: (i) make any building design conversion, or (ii) make any alterations, conversions, or additions to the building, equipment or parking area;

(e) Make repairs or replacements required because of damage, wear and tear, or in order to maintain the Restaurant building and parking area in good condition and in conformity to blueprints and plans;

(f) Where parking is provided, maintain the parking area for the exclusive use of Restaurant customers;

(g) Operate the Restaurant seven days per week throughout the year and at least during the hours from 7:00 a.m. to 11:00 p.m., or such other hours as may from time to time be prescribed by McDonald's (except when the Restaurant is untenable as a result of fire or other casualty), maintain sufficient supplies of food and paper products, and employ adequate personnel so as to operate the Restaurant at its maximum capacity and efficiency;

(h) Cause all employees of Licensee, while working in the Restaurant, to: (i) wear uniforms of such color, design and other specifications as McDonald's may designate from time to time, (ii) present a neat and clean appearance; and (iii) render competent and courteous service to Restaurant customers;

(i) In the dispensing and sale of food products: (i) use only containers, cartons, bags, napkins and other paper goods and packaging bearing the approved trademarks and which meet the McDonald's System specifications and quality standards which McDonald's may designate from time to time; (ii) use only those flavorings, garnishments and food and beverage ingredients which meet the McDonald's System specifications and quality standards which McDonald's may designate from time to time; and (iii) to employ only those methods of food handling and preparation which McDonald's may designate from time to time;

(j) To make prompt payment in accordance with the terms of invoices rendered to Licensee on his purchase of fixtures, signs, equipment and food and paper supplies;

(k) At his own expense, comply with all federal, state and local laws, ordinances and regulations affecting the operation of the Restaurant.

13. **Best Efforts.** Licensee shall diligently and fully exploit the rights granted in this Franchise by personally devoting full time and best efforts and, in case more than one individual has executed this Franchise as the Licensee, then Fredric E. Beatty shall personally devote full time and best efforts to the operation of the Restaurant. Licensee shall keep free from conflicting enterprises or any other activities which would be detrimental to or interfere with the business of the Restaurant.

14. *Interference with Employment Relations of Others.* During the term of this Franchise, Licensee shall not employ or seek to employ any person who is at the time employed by McDonald's, any of its subsidiaries, or by any person who is at the time operating a McDonald's restaurant or otherwise induce, directly or indirectly, such person to leave such employment. This paragraph 14 shall not be violated if such person has left the employ of any of the foregoing parties for a period in excess of six months.

15. *Assignment.* Without the prior written consent of McDonald's, Licensee's interest in this Franchise shall not be assigned or otherwise transferred in whole or in part (whether voluntarily or by operation of law) directly, indirectly, or contingently, and then only in accordance with the terms of this paragraph 15.

(a) *Death or Permanent Incapacity of Licensee.* Upon the death or permanent incapacity of Licensee, the interest of Licensee in this Franchise may be assigned either pursuant to the terms of sub-paragraph (d) herein or to one or more of the following persons: Licensee's spouse, heirs, or nearest relatives by blood or marriage, subject to the following conditions: (i) If, in the sole discretion of McDonald's, such person shall be capable of conducting the Restaurant business in accordance with the terms and conditions of this Franchise, and (ii) if such person shall also execute an agreement by which he personally assumes full and unconditional liability for and agrees to perform all the terms and conditions of this Franchise to the same extent as the original Licensee. If, in McDonald's sole discretion, such person cannot devote his full time and best efforts to the operation of the Restaurant or lacks the capacity to operate the Restaurant in accordance with this Franchise, McDonald's shall have an option to operate and/or manage the Restaurant for the account of Licensee or of his estate until the deceased or incapacitated Licensee's interest is transferred to another party acceptable to McDonald's in accordance with the terms and conditions of this Agreement. However, in no event shall such McDonald's operation and management of the Restaurant continue for a period in excess of twelve (12) full calendar months without the consent of Licensee or his estate. In the event that McDonald's so operates and/or manages the Restaurant, McDonald's shall make a complete account to and return the net income from such operation to the Licensee or to his estate, less a reasonable management fee and expenses. If the disposition of the Restaurant to a party acceptable to McDonald's has not taken place within twelve (12) months from the date that McDonald's has commenced the operation or management of the Restaurant on behalf of the deceased or incapacitated Licensee, then, in that event McDonald's shall have the option to purchase the Restaurant at fair market value for cash or its common stock at its option.

(b) *Assignment to Licensee's Corporation.* McDonald's shall, upon Licensee's compliance with such requirements as may from time to time be prescribed by McDonald's, including a Stockholders Agreement in the form prescribed by McDonald's, consent to an assignment to a corporation whose shares are wholly owned and controlled by Licensee. The corporate name of the corporation shall not include any of the names or trademarks granted by this Franchise. Any subsequent assignment or transfer, either voluntarily or by operation of law, of all or any part of said shares shall be made in compliance with the terms and conditions set forth in sub-paragraph (a) and (d) herein.

(c) *First Option to Purchase.* Licensee or his representative shall at least 20 days prior to the proposed effective date give McDonald's written notice of intent to sell or otherwise transfer this Franchise pursuant to sub-paragraph (d) of this paragraph 15. The notice shall set forth the name and address of the proposed purchaser and all the terms and conditions of any offer. McDonald's shall have the first option to purchase the Restaurant by giving written notice to Licensee of its intention to purchase on the same terms as the offer within ten (10) days following McDonald's receipt of such notice. However, if McDonald's fails to exercise its option and the Restaurant is not subsequently sold to the proposed purchaser for any reason, McDonald's shall continue to have, upon the same conditions, a first option to purchase the Restaurant upon the terms and conditions of any subsequent offer.

(d) *Other Assignment.* In addition to any assignments or contingent assignments contemplated by the terms of sub-paragraphs (a) and (b) of this paragraph 15, Licensee shall not sell, transfer or assign this Franchise to any person or persons without McDonald's prior written consent. Such consent shall not be arbitrarily withheld.

In determining whether to grant or to withhold such consent, McDonald's shall consider of each prospective transferee, by way of illustration, the following: (i) work experience and aptitude, (ii) financial background,

(iii) character, (iv) ability to personally devote full time and best efforts to managing the Restaurant, (v) residence in the locality of the Restaurant, (vi) equity interest in the Restaurant, (vii) conflicting interests, and (viii) such other criteria and conditions as McDonald's shall then apply in the case of an application for a new license to operate a McDonald's restaurant. McDonald's consent shall also be conditioned each upon such transferee's execution of an agreement by which he personally assumes full and unconditional liability for and agrees to perform from the date of such transfer all obligations, covenants and agreements contained in this Franchise to the same extent as if he had been an original party to this Franchise. Licensee-transferor shall continue to remain personally liable for all affirmative obligations, covenants and agreements contained herein for the full term of this Franchise or for such shorter period as McDonald's may, in its sole discretion, determine. Upon each assignment or other transfer of this Franchise to any person or persons under the terms and conditions of this sub-paragraph 15(d), the percentage service fee charge owing to McDonald's after the date of such assignment or transfer shall be automatically adjusted to the then prevailing percentage service fee charge required under new Franchises issued by McDonald's for similar McDonald's restaurants at the time of such assignment or transfer.

16. *Licensee not an Agent of McDonald's.* Licensee shall have no authority, express or implied, to act as agent of McDonald's or any of its affiliates for any purpose. Licensee is, and shall remain, an independent contractor responsible for all obligations and liabilities of, and for all loss or damage to, the Restaurant and its business, including any personal property, equipment, fixtures or real property connected therewith and for all claims or demands based on damage or destruction of property or based on injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of the Restaurant.

17. *Insurance.* Licensee shall, upon taking possession of the Restaurant, acquire and maintain in effect such insurance with such coverages as may be required by the terms of any lease of the Restaurant premises to McDonald's, and in any event, Licensee shall acquire and maintain in effect not less than the following coverages in the following minimum amounts:

(a) Worker's Compensation insurance prescribed by law in the state in which the Restaurant is located and Employer's Liability Insurance with \$100,000 minimum limit. If the state in which the Restaurant is located allows the option of not carrying Worker's Compensation Insurance, and Licensee chooses to exercise that option, Licensee shall nonetheless carry and maintain other insurance with limits at least equal to those established by the state's Worker's Compensation law or as may be approved by McDonald's.

(b) Comprehensive general liability insurance in a form approved by McDonald's with a combined single limit of \$1,000,000.00 for Bodily Injury and Property Damage, per occurrence.

(c) All such insurance as may be required under the Lease.

All insurance policies required to be carried hereunder shall name McDonald's and any party designated by McDonald's as additional insureds, as their interests may appear in this Agreement. All policies shall be effective on or prior to the date Licensee is given possession of the Restaurant premises for the purpose of installing equipment or opening the Restaurant, whichever occurs first, and evidence of payment of premiums and duplicate copies of policies of the insurance required herein shall be delivered to McDonald's at least thirty (30) days prior to the date that Licensee opens for business and/or thirty (30) days prior to the expiration dates of an existing policy of insurance. All policies of insurance shall include a provision prohibiting cancellations or material changes to the policy thereof until thirty (30) days written notice has been given to McDonald's.

In the event Licensee shall fail to obtain the insurance required herein, McDonald's may, but need not, purchase said insurance, adding the premiums paid to Licensee's monthly rent. (Licensee may authorize McDonald's to purchase and to administer the required minimum insurance on Licensee's behalf. However, McDonald's by placement of the required minimum insurance, assumes no premium expense nor guarantees any losses sustained). McDonald's may relieve itself of all obligations with respect to the administration of such required insurance coverage by giving ten (10) days written notice to Licensee.

All insurance shall be placed with a reputable insurance company licensed to do business in the state in which the Restaurant is located and having a Financial Size Category of XV and Policyholders Rating of "A+" or "A" (Excellent) as assigned by Alfred M. Best and Company, Inc.

18. **Material Breach.** The parties agree that the happening of any of the following events shall constitute a material breach of this Franchise and violate the essence of Licensee's obligations, and, without prejudice to any of its other rights or remedies at law or in equity, McDonald's at its election, may terminate this Franchise upon the happening of any of the following events:

- (a) Licensee shall fail to maintain and operate the Restaurant in a good, clean, wholesome manner and in compliance with the standards prescribed by the McDonald's System;
- (b) Licensee shall be adjudicated a bankrupt, become insolvent, or a receiver, whether permanent or temporary, for all or substantially all of Licensee's property, shall be appointed by any court, or Licensee shall make a general assignment for the benefit of his creditors, or a voluntary or involuntary petition under any bankruptcy law shall be filed with respect to Licensee and shall not be dismissed within thirty (30) days thereafter;
- (c) Any payment owing to McDonald's is not paid within thirty (30) days after the date such payment is due;
- (d) Any judgment or judgments aggregating in excess of \$5,000.00 against Licensee or any federal, state or local tax lien in excess of \$5,000.00 against Licensee's property shall remain unsatisfied or unbonded of record in excess of thirty (30) days;
- (e) Licensee shall cause, suffer or permit (voluntarily or involuntarily) his right of possession as lessee or sublessee of the premises on which the Restaurant is located to be terminated prematurely for any cause whatever;
- (f) Licensee shall acquire any interest in a business in violation of sub-paragraph 11(a);
- (g) Licensee shall duplicate the McDonald's System in violation of sub-paragraph 11(c);
- (h) Licensee shall make or cause a disclosure of any portion of the McDonald's System in violation of sub-paragraph 11(d) or shall make or cause a disclosure of part of the McDonald's System business manuals;
- (i) Licensee shall violate sub-paragraph 11(e) by use of any name, trademark, service mark, or other intellectual property right of McDonald's exceeding the restrictions of said paragraph 11;
- (j) Licensee shall knowingly sell food or beverage products other than those designated by McDonald's or which fail to conform to McDonald's System specifications for those products, or which are not prepared in accordance with the methods prescribed by McDonald's, or fail to sell products designated by McDonald's;
- (k) Any assignment or other transfer of any interest of the Licensee in this Franchise shall occur in violation of sub-paragraph 15 (d) herein;
- (l) Licensee shall deny McDonald's the right to inspect the Restaurant at reasonable times; or
- (m) Licensee shall fail to make or make repeated delays in the prompt payment of undisputed invoices from his suppliers or in the remittance of payments as required by this Franchise.

19. **Other Breaches.** If Licensee fails in the performance of any of the terms and conditions of this Franchise (other than performance of the terms and conditions listed in paragraph 18), he shall be guilty of a breach of this Franchise which shall not (except in the case of repeated breaches of the same or of different terms and conditions of the Franchise) constitute grounds for termination of the Franchise. McDonald's shall have the right to seek judicial enforcement of its rights and remedies, including, but not limited to, injunctive relief, damages, or specific performance. Notwithstanding any of the provisions of this paragraph 19, any uncured breach of the terms of this Franchise (whether of paragraph 18 or 19) shall be sufficient reason for McDonald's to withhold approval of its consent to any assignment or transfer of Licensee's interest in the Franchise provided for herein.

20. **Effect of Termination.**

- (a) In the event of any material breach of this Franchise, McDonald's shall have an immediate right to enter and take possession of the Restaurant in order to maintain continuous operation of the Restaurant, to provide for orderly change of management and disposition of personal property, and to otherwise protect McDonald's interest.
- (b) Upon termination of this Franchise due to any breach or breaches, Licensee shall not, without the prior written consent of McDonald's, remove any furniture, fixtures, signs, equipment or other property or leasehold improvements from the premises either prior to or for a period of thirty (30) days following such termination. McDonald's

shall have the option for thirty (30) days following any such termination to purchase Licensee's furniture, fixtures, signs, equipment, leasehold improvements and other property or any portion thereof for a sum equal to the fair market value of such property. In the event of such a termination, there shall be no payment by McDonald's for intangible assets of Licensee.

(c) Upon termination of this Franchise due to the expiration of its term or as a result of any eminent domain proceedings affecting the premises upon which the Restaurant is situated, Licensee shall not remove any furniture, fixtures, signs, equipment and other property or leasehold improvements within sixty (60) days prior to the date specified for termination or the date specified for takeover by any public authority. McDonald's shall, upon written notice at least thirty (30) days prior to such date of termination of McDonald's intention to purchase said property, have the option to purchase Licensee's furniture, fixtures, signs, equipment and other chattels or any portion thereof for a sum equal to the fair market value of such physical property. In the event of such a termination, there shall be no payment by McDonald's for intangible assets of Licensee.

(d) Upon termination or expiration of the Franchise, Licensee shall forthwith return to McDonald's the business manuals furnished to him, together with all other material containing trade secrets, operating instructions or business practices; discontinue the use of the McDonald's System and its associated trade names, service marks and trademarks or the use of any and all signs and printed goods bearing such names and marks, or any reference to them; not disclose, reveal or publish all or any portion of the McDonald's System; and Licensee shall not thereafter use any trade name, service mark or trademark similar to or likely to be confused with those of McDonald's.

21. *Effect of Waivers.* No waiver by McDonald's or any breach or a series of breaches of this Franchise shall constitute a waiver of any subsequent breach or waiver of the terms of this Franchise.

22. *Notices.* Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, addressed to Licensee at the Restaurant or to McDonald's at ONE McDONALD'S PLAZA, OAK BROOK, ILLINOIS 60521. Either party, by a similar written notice, may change the address to which notices shall be sent.

23. *Cost of Enforcement.* If McDonald's institutes any action at law or in equity against Licensee to secure or protect McDonald's rights under or to enforce the terms of this Franchise, in addition to any judgment entered in its favor, McDonald's shall be entitled to recover such reasonable attorneys' fees as may be allowed by the court together with court costs and expenses of litigation.

24. *Indemnification.* If McDonald's shall be subject to any claim, demand or penalty or become a party to any suit or other judicial or administrative proceeding by reason of any claimed act or omission by Licensee, his employees or agents, or by reason of any act occurring on the Restaurant premises, or by reason of an omission with respect to the business or operation of the Restaurant, Licensee shall indemnify and hold McDonald's harmless against all judgments, settlements, penalties, and expenses, including attorneys' fees, court costs and other expenses of litigation or administrative proceeding, incurred by or imposed on McDonald's in connection with the investigation or defense relating to such claim or litigation or administrative proceeding and, at the election of McDonald's, Licensee shall also defend McDonald's.

25. *Construction and Severability.* All references in this Franchise to the singular shall include the plural where applicable, and all references to the masculine shall include the feminine and vice-versa. Either reference shall include the feminine. If any part of this Franchise for any reason shall be declared invalid, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect. In the event that any material provision of this Franchise shall be stricken or declared invalid, McDonald's reserves the right to terminate this Franchise.

26. *Scope and Modification of Franchise.* This Franchise (including Exhibit A and any riders hereto) constitutes the entire agreement between the parties and supersedes all prior and contemporaneous, oral or written, agreements or understandings of the parties. No interpretation, change, termination or waiver of any of the provisions hereof shall be binding upon McDonald's unless in writing signed by an officer of McDonald's or its Licensing Director, and which is specifically identified as an amendment hereto. No modification, waiver, termination, rescission, discharge or cancellation of this Franchise shall affect the right of any party hereto to enforce any claim or right hereunder, whether or not liquidated, which occurred prior to the date of such modification, waiver, termination, rescission, discharge or cancellation.

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27. **Governing Laws.** The terms and provisions of this Franchise shall be interpreted in accordance with and governed by the laws of the State of Illinois.

28. **Acknowledgement.** Licensee acknowledges that:

(a) The term of this Franchise is set forth in paragraph 2(b) hereof with no promise or representation as to the renewal of this Franchise or the grant of a new Franchise.

(b) Licensee hereby represents that he has received a copy of this Franchise, has read and understands all obligations being undertaken and has had an opportunity to consult with his attorney with respect thereto at least five (5) days prior to his execution thereof;

(c) No representation has been made by McDonald's as to the future profitability of the Restaurant;

(d) Prior to the execution of this Franchise, Licensee has worked at a McDonald's restaurant, has had ample opportunity to contact existing licensees of McDonald's and to investigate all representations made by McDonald's relating to the McDonald's System;

(e) This Franchise establishes the Restaurant at the location specified on page 1 hereof only and that no "exclusive," "protected" or other territorial rights in the contiguous market area of such Restaurant is hereby granted or inferred;

(f) This Franchise supersedes any and all other agreements, representations, respecting the Restaurant and contains all the terms, conditions, and obligations of the parties with respect to the grant of this Franchise;

(g) McDonald's is the sole owner of the trademarks, trade names, service marks and good will associated therewith, and Licensee acquires no right, title, or interest in those names and marks other than the right to use them only in the manner and to the extent prescribed and approved by McDonald's;

(h) No future franchise or offers of franchises for additional McDonald's restaurants, other than this Franchise for the Restaurant, have been promised to Licensee and that any other franchise offer shall only be in writing, executed by an officer of McDonald's and specifically identified as a Franchise Agreement or Rewrite Commitment Letter;

(i) Neither McDonald's nor anyone acting on its behalf has made any representations, inducements, promises, or agreements, orally or otherwise, respecting the subject matter of this Franchise, which is not embodied herein or set forth in the Uniform Franchise Offering Circular For Prospective Franchisees; and

(j) This Franchise is offered to Licensee personally and to no others, and may not be accepted by any other person, partnership or corporation, or transferred by assignment, will or operation of law.

IN WITNESS WHEREOF, the parties hereto set their hands and seals, in duplicate, the day and year in this instrument first above written.

McDONALD'S CORPORATION, DBA
DELAWARE-McDONALD'S CORPORATION-

By: Eugene Stachowiak
EUGENE STACHOWIAK,
ASSISTANT VICE PRESIDENT-FRANCHISING

Prepared By: Tammy Kontrimas

Fredric E. Beatty 5/15/93
Licensee Date
Fredric E. Beatty

Carolyn S. Beatty 5/15/93
Licensee Date
Carolyn S. Beatty

L/C 37/1074

New Restaurant Rider

This Rider is attached to and incorporated into that certain Franchise Agreement ("Agreement") dated April 29, 1993, by and between McDonald's Corporation, ("McDonald's") d/b/a Delaware McDonald's Corporation and Fredric E. Beatty and Carolyn S. Beatty ("Licensee").

1. Prior to the opening date of the Restaurant, all construction extras ordered or authorized by Licensee for which McDonald's has paid the parties constructing the Restaurant shall be paid by Licensee to McDonald's.
2. Licensee hereby agrees to the insertion by McDonald's into the Supplement Operator's Lease of dates of commencement and termination, when said dates are ascertained, and the finalized legal description of the Restaurant location.
3. The amount of the monthly base rental payment set forth in the Operator's Lease is computed based in part upon total current real estate and estimated construction costs. If such costs increase more than \$10,000.00 from now until 120 days after Restaurant opening, the monthly base rental payment will be recomputed and increased based upon said increased costs, but only to a maximum monthly base rental increase of \$325.00, according to the same rental formula. The corresponding monthly base sales will be adjusted accordingly. The effective date of said increase will be 120 days after Restaurant opening.
4. A non-interest bearing deposit of \$15,000.00 as security for the faithful performance of the terms of the Franchise Agreement (including the Lease), will be transferred from your restaurant located at Liberty Boulevard & Route 219, DuBois, Pennsylvania. This deposit will, subject to offset of losses by McDonald's arising from your breach of this Franchise Agreement, be returned to you at the end of the Franchise term as more specifically provided under the Lease.
5. The total site development and construction costs used to calculate this rental have been reduced by your contribution of \$91,250.00
6. This Franchise is also subject to your execution and delivery to us of a Franchise Termination Agreement dated April 29, 1993, pertaining to the McDonald's restaurant located at Liberty Boulevard & Route 219, DuBois, Pennsylvania.

DuBois, Pennsylvania:
S.R. 255
L/C: 37-1074
File# 10,729

EXHIBIT A TO FRANCHISE AGREEMENT

OPERATOR'S LEASE

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OPERATOR'S LEASE

THIS LEASE shall be considered effective the same date as the Franchise Agreement dated April 29, 1993, to which it is attached (the "Franchise Agreement"). The term "Landlord," when used in this Lease, shall refer to McDonald's Corporation and the term "Tenant," when used in this Lease, shall refer to the undersigned Tenant.

In consideration of the mutual promises contained in this Lease, the parties agree as follows:

ARTICLE 1 SUMMARY OF FUNDAMENTAL LEASE PROVISIONS

1.01 Term: (See Article 2.02) The term of this Lease will begin on the date the McDonald's Restaurant constructed on the Premises opens for business and will end twenty (20) years thereafter.

1.02 Rent: See Article 3.01 and Schedule B, attached.

1.03 Security Deposit: \$15,000.00 Cash (See Article 3.07)

1.04 Legal Description: See Schedule A and Article 2.01.

1.05 Liability Insurance Limits: \$1,000,000.00, per occurrence.

1.06 Attachments, Exhibits and Addenda: This Lease includes the following Attachments, Schedules and Addenda which will take precedence over conflicting provisions (if any) of this Lease, and they are made an integral part of this Lease and are fully incorporated into it by this reference.

- A. Schedule A -- Legal Description
- B. Schedule B -- Rent
- C. Easement dated December 24, 1992

References in this Article to the other Articles in this Lease are for convenience and to designate some of the other Articles where references to particular Fundamental Lease Provisions will be made. If there is any conflict between a Fundamental Lease Provision and the balance of the Lease, the former will control.

ARTICLE 2 PREMISES AND TERM

2.01 Premises: Landlord leases to Tenant the real estate described in Schedule A, attached, together with all easements and appurtenances and all buildings and improvements located on the real estate (all of which are collectively referred to in this Lease as "the Premises"). The Premises are subject to any easements, conditions, encumbrances, restrictions, and party wall agreements, if any, of record and roads and highways and zoning and building code restrictions existing on the date of this Lease.

2.02 Term: The term of this Lease will be as indicated in Article 1.01, subject, however, to any rights set forth in this Lease for the earlier termination of the Lease term. At the request of either party, a supplement establishing the beginning and ending dates of this Lease shall be executed. Landlord may establish the beginning date by notifying the Tenant in writing of the date it recognizes as the beginning date of the term.

2.03 Quiet Enjoyment: Landlord promises that Tenant, upon paying the rent and all other charges provided for in this Lease, and upon observing and keeping all Tenant's obligations, will lawfully and quietly hold, occupy and enjoy the Premises during the term of this Lease, without hindrance or interference by anyone claiming by, through or under Landlord, subject to the terms of this Lease and any mortgage or encumbrance now or hereafter placed on the Premises by Landlord.

2.04 Use of Premises: Tenant will use and occupy the Premises solely for a McDonald's Restaurant selling only such products and operating in a manner that may be designated by McDonald's Corporation. Tenant agrees to continuously occupy the Premises during the term of this Lease and agrees not to vacate them. A breach of this provision will be deemed to be substantial. If Tenant vacates the Premises during the term of this Lease, Landlord will have the right, in addition to its other rights and remedies, to enter the Premises for the purpose of continuing the operation of the McDonald's Restaurant; and, if Landlord so elects, Landlord shall be entitled to all profits, if any, from the operation of the restaurant. Tenant further agrees to conduct its restaurant business in a manner that will maximize Gross Sales. Tenant agrees to purchase, install and maintain, all at its own expense, signs and trade fixtures and equipment in accordance with the plans, specifications and layouts of McDonald's Corporation, or any of its subsidiaries, unless these items have been furnished by Landlord.

2.05 Rule Against Perpetuities: If the term of this Lease or the accrual of rent have not commenced within one (1) year from date of execution of this Lease, this Lease will become null and void and of no further force and effect. The sole remedy of Tenant in such case is the return of any monies paid to Landlord in anticipation of this Lease.

2.06 Construction and Delivery of Building and Other Improvements: Landlord will construct or have others construct or remodel or otherwise prepare the Premises for a McDonald's Restaurant in accordance with the then current plans and specifications of McDonald's Corporation. The Premises will be delivered to Tenant when they are sufficiently completed to allow Tenant to install, at Tenant's sole cost and expense, the signs, trade fixtures, equipment and other personal property and improvements necessary to complete the Premises for the operation of a McDonald's Restaurant, unless otherwise provided in Article 1.04. Tenant will promptly and diligently perform its work in accordance with the plans and specifications previously submitted by or to Tenant and approved by Landlord and in compliance with all applicable federal, state and local statutes, codes and regulations. Tenant will do all that is reasonably necessary to promptly open the restaurant as soon as possible after delivery of the Premises to the Tenant.

2.07 Acceptance of Premises: By taking possession of the Premises, Tenant acknowledges that Tenant has inspected the Premises and the improvements thereon and found them to be in a safe, satisfactory, and completed condition, ready for occupancy and the installation of trade fixtures,

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equipment and signage. All warranties as to the condition of the Premises or its fitness for use, either expressed or implied, are expressly waived by Tenant. Tenant may, however, receive certain warranties and guarantees, by separate agreement, from McDonald's Corporation or one of its subsidiaries; but those warranties will be personal covenants, only, and will not be binding upon the successors and assigns of Landlord.

2.08 Tenant's Compliance With Various Requirements: Tenant may not use or permit any person to use the Premises or any part of it for any use in violation of federal, state or local laws, including, but not limited to, present and future ordinances or other regulations of any municipality in which the Premises are situated. Tenant will not use or permit any person to use the Premises or any building thereon for the manufacture or sale of intoxicating liquor of any kind whatsoever. Tenant will not operate any coin or token operated vending or similar device for the sale of any goods, wares, merchandise, food, beverages or services, including but not limited to, pay telephones, pay lockers, pay toilets, scales, amusement devices, and machines for the sale of beverages, foods, candy, cigarettes or other commodities. A pay telephone may be installed for the use of Tenant's employees, only, if it is not accessible to the patrons and customers of the McDonald's Restaurant. During the term of this Lease, Tenant will keep the Premises and all buildings in a clean and wholesome condition and repair and will maintain the Premises so that they fully comply with all lawful health and police regulations. Tenant will conduct the McDonald's Restaurant on the Premises strictly in accordance with the terms and provisions of the Franchise Agreement. Tenant will minimize all cooking odors and smoke, maintain the highest degree of sanitation and comply with all ordinances, orders, directives, rules and regulations of all governmental bodies, bureaus and offices having jurisdiction over Tenant and over the Premises. Landlord makes no warranties or representations as to the state of such ordinances, rules, orders and directives, regulations, and Tenant acknowledges that Tenant has independently investigated them and will comply with them. Landlord makes no warranties or representations that the Premises, when accepted by Tenant, conform with the Federal, State or Industrial Safety Codes. Tenant will obtain, keep in full force and effect, and strictly comply with, all governmental licenses and permits which may be required for Tenant's use and occupancy of the Premises and the operation of the McDonald's Restaurant.

ARTICLE 3 RENT, TAXES, RECORDS AND REPORTS

3.01 Rent: Tenant promises to pay rent to Landlord, without offset or deduction, as follows:

A. Basic Rent: Tenant will pay monthly to Landlord the Basic Rent indicated in Schedule B, attached. The first Basic Rental payment will be due and payable on the commencement date of the term, and the subsequent monthly rental payments will be due thereafter, in advance, on or before the first day of every succeeding calendar month. If the date of commencement of rent occurs on a day other than the first day of the month, the first rental payment (both of Basic Rent and Percentage Rent, if any, and the last rental payment, if applicable) will be adjusted for the proportionate fraction of the whole month so that all rental payments, other than the first, will be made and become due and payable on the first day of each month.

B. Percentage Rent: In addition to the Basic Rent, Tenant promises to pay Percentage Rent to Landlord in the amount and during the periods set forth in Schedule B, attached, on all Gross Sales from the Premises in excess of the Monthly Gross Sales set forth in Schedule B, attached. See Article 3.03 for the manner of payment of Percentage Rent.

C. Definition of "Gross Sales": For the purposes of this Lease, the term "Gross Sales" will mean all receipts (cash, cash equivalent, credit or redeemed gift certificates) or revenue from sales by Tenant, and of all others, from all business conducted upon or from the Premises, whether such sales be evidenced by check, cash, credit, charge account, exchange or otherwise, and will include, but not be limited to, the amount received from the sale of goods, wares and merchandise, including sales of food, beverages and tangible property of every kind and nature, promotional or otherwise, and for services performed at the

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Premises, together with the amount of all orders taken or received at the Premises, all as may be prescribed or approved by the Franchise Agreement. Gross Sales will not include sales of merchandise for which cash has been refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided that such returned or exchanged merchandise will have been previously included in Gross Sales. Gross Sales will not include the amount of any sales tax imposed by any federal, state or other governmental authority directly on sales and collected from customers, provided that the amount of the tax is added to the selling price and actually paid by Tenant to such governmental authority. Each charge or sale upon installment or credit will be treated as a sale for the full price in the month during which such charge or sale is made irrespective of the time when Tenant receives payment (whether full or partial). In addition, Landlord may, from time to time, permit or allow certain other items to be excluded from Gross Sales. However, any such permission or allowance may be revoked or withdrawn at the discretion of Landlord and will not stop Landlord from requiring strict compliance with the terms of this Lease.

D. Taxes and Assessments: In addition to the Basic Rent and the Percentage Rent, Tenant will pay, as further additional charges, all real estate taxes and special and general assessments which may become due and payable by Landlord during the term or any extension of this Lease, including those taxes specifically designated as taxes in Landlord's Head Lease, if applicable, whether paid separately or included in rent to the Head Landlord. Landlord will first pay, when due, all taxes (except for Personal Property Taxes) and assessments, and Tenant will then promptly reimburse Landlord upon receipt of a billing advice from Landlord for all real estate tax and assessment payments made by Landlord to the taxing authority or the fee owner of the demised premises, if required by the Head Lease, as the case may be.

(a.) **First and Last Year:** All real estate taxes and general and special assessment payments of every nature paid by Landlord during the first and last year of the term of this Lease will be prorated. This tax proration will be based upon the fiscal year of the taxing authority levying the tax, using the percentage of the taxes payable during the first or last tax fiscal year that Tenant actually occupies, or had the right to occupy, the demised premises.

(b.) **Rent Taxes:** Tenant will also pay promptly, when due, any tax which is levied or assessed against the rental, real or tangible personal property, whether or not called a rental tax, excise tax, sales tax, gross receipts tax, tax on services or otherwise; and Tenant will promptly reimburse Landlord for any similar tax which Landlord is required to pay or, in fact, does pay. Such payment or reimbursement will not be deducted from Gross Sales.

(c.) **Personal Property Taxes:** Tenant agrees to pay all personal property taxes levied upon the fixtures, equipment and other improvements located on the Premises whether installed and paid for by Tenant or Landlord. The personal property taxes for the first and last year of the term of this Lease will be prorated in the same manner as the real estate taxes and assessments.

(d.) **Appeal:** Subject to Landlord's rights under the Head Lease (if any), Tenant, at Tenant's sole expense, is authorized and hereby permitted to contest and appeal property tax assessments on the demised premises, and Landlord will cooperate with and assist Tenant in any reasonable manner.

E. Other Charges and Expenses: Any other charge or expense of any nature which Landlord may be required to pay by virtue of Landlord's ownership or leasehold interest in the Premises (including, but not limited to, common area maintenance charges, merchant's association's dues, utility charges, fees and taxes and security service fees) will be promptly paid to Landlord as additional charges. Landlord will pay these charges, and Tenant will promptly reimburse Landlord upon receipt of a bill or statement from Landlord.

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F. Method and Proof of Payment: With respect to Articles 3.01 (D) and (E), above, or any other provision in this Lease which requires or contemplates Landlord first paying any charge or expense and then seeking reimbursement from Tenant, Landlord may, at its exclusive option, require Tenant to make such payments directly to the taxing authority, Head Landlord (if applicable), utility company or other party due a payment for which Tenant is liable under this Lease.

If Landlord wishes to exercise this option, Landlord shall notify Tenant of its election and shall supply Tenant with all information reasonably necessary to properly begin making such payments. From that time on, Tenant shall make such payments directly and all penalties and expenses thereafter accruing shall be the responsibility of Tenant. If Landlord so requests, Tenant shall promptly provide to Landlord reasonable proof of payment, including, but not limited to, receipted bills, canceled checks and certified statements.

Landlord reserves the right, upon further notice to Tenant, to cancel its election and to resume Landlord's payment and Tenant's reimbursement of these charges and expenses as provided in Articles 3.01 (D) and (E), above.

3.02 Records: Tenant will keep and preserve upon the Premises complete written records of all Gross Sales conducted in any calendar or business year for a period of three (3) years, in a manner and form satisfactory to Landlord. Tenant will permit Landlord or Landlord's representatives to examine or audit the records at any and all reasonable times, and will, upon Landlord's request, explain the method of keeping records. The books and records will include cash register tapes, properly identified, over-ring slips, sales journals, general ledger, profit and loss statements, balance sheets, purchase invoices, bank statements with canceled checks and deposit advices, corporate books and records, management company books, including, but not limited to, minute books and stock certificate books, state sales tax returns, federal income tax returns, retailer's occupation tax returns or similar returns required to be filed by the state in which the Premises are located.

3.03 Reports: Within ten (10) days after the end of each calendar month during the term of this Lease, Tenant will deliver to Landlord, at the place last fixed for the payment of rent, a statement by Tenant or Tenant's authorized representative, reflecting Gross Sales during the preceding month, and Tenant will pay at that time to Landlord all sums due based upon Gross Sales as shown in the statement for the period covered by the statement. Within thirty (30) days following the expiration of each calendar year of the term of this Lease, Tenant will deliver to Landlord at the place last fixed for the payment of rent, a statement of Gross Sales for the preceding calendar year (certified, at Tenant's expense, if requested by Landlord, by a Certified Public Accountant of good standing and reputation in the state in which the Premises are located) which will show Gross Sales separately for each monthly period during the preceding year.

A. Discrepancy in Reports: If there is a discrepancy between Gross Sales as reported by Tenant's monthly statements and the Gross Sales as shown in the annual statement, the annual statement will be deemed the final statement of Gross Sales for the year and the Percentage Rent will be adjusted accordingly. If, by virtue of any adjustment, any money is due from Tenant to Landlord, Tenant will pay such sum concurrently with the delivery of the annual statement. If there is any money due from Landlord to Tenant, Landlord will promptly pay such amount to Tenant.

B. Default in Reporting: Upon failure of Tenant to prepare and deliver promptly any monthly or annual statement required by this Lease or to make any required payment, Landlord may elect to treat Tenant's failure as a substantial breach of this Lease entitling Landlord to terminate this Lease and Tenant's right to possession of the Premises.

C. Inspection of Records by Landlord: If Landlord is dissatisfied with statements furnished by Tenant, Landlord may notify Tenant, and Landlord, at its option, may then examine Tenant's books or

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have a Certified Public Accountant selected by Landlord examine Tenant's books. If such examination discloses any underpayment of Percentage Rent, Tenant will promptly pay the deficient amount. If Tenant contests such deficiency, Landlord will then appoint an independent auditor to examine Tenant's books and records. If the independent audit confirms that there has been an underpayment exceeding two percent (2%) of the Percentage Rent, as represented by Tenant, Tenant will, in addition to the above, reimburse Landlord for the cost of the auditor's examination.

3.04 No Abatement of Rent: Except as provided in this Lease, damage to or destruction of any portion or all of the buildings, structures and fixtures upon the Premises, by fire, the elements or any other cause, whether with or without fault on the part of Tenant, will not terminate this Lease or entitle Tenant to surrender the Premises or entitle Tenant to any abatement of or reduction in the rent payable, or otherwise affect the respective obligations of the parties, any present or future law to the contrary notwithstanding, subject to Section 6.05 in this Lease.

3.05 Interest on Past Due Rent: All rent and other sums that may become due and owing from Tenant to Landlord will bear interest from their respective due dates at the highest rate of interest permitted by law in the state in which the Premises are located or, if there is no maximum rate permitted by law, at 15% per annum.

3.06 Lien for Rent: Tenant grants to Landlord a lien upon all Tenant's property located on the Premises, from time to time, for all rent and other sums due from Tenant to Landlord under the provisions of this Lease.

3.07 Security Deposit: Tenant, as security for the performance of its obligations under this Lease or the Franchise Agreement, has deposited with Landlord the sum indicated in Article 1.03. Landlord, or its successors or assigns, will retain the Security Deposit as long as this Lease is in force and, unless otherwise required by law, without any obligation for the payment of interest and with full authority to commingle it with any other funds until the cessation of liabilities of Tenant under the Lease, at which time Landlord or its successors or assigns are bound, within 30 days, to repay so much of the amount of the Security Deposit as may not have been used to cure Tenant's defaults. If there is a default by Tenant in any of Tenant's obligations or any of the terms, covenants, agreements and conditions of this Lease or the Franchise Agreement, Landlord may, in addition to other remedies available, use, apply or retain all or any part of the Security Deposit to cure any default of Tenant, or otherwise make itself whole for any damage or expense occasioned thereby. This shall include any damages and expenses or deficiencies in the reletting of the Premises, regardless of whether the accrual of such damage, expenses or deficiencies occurred before or after eviction or summary or other re-entry by Landlord.

If Landlord resorts to the Security Deposit, Tenant will promptly restore the amount of such Security Deposit so that the sum will remain intact at all times. Upon any assignment by Landlord of its interest in this Lease, Landlord and subsequent assignors will be fully released and discharged of any liability with respect to any Security Deposit made by Tenant under this Lease upon procuring an assumption from the assignee of all of Landlord's responsibilities with respect to the Security Deposit. Tenant will not assign or encumber the Security Deposit and Landlord will not be bound by any such assignment or encumbrance.

ARTICLE 4 OBLIGATIONS OF TENANT

4.01 Utilities: Tenant will pay directly all charges for gas, electricity, or other utilities, sewer charges, taxes and driveway fees, if applicable, and for all water used on the Premises as such charges become due. Tenant's obligation to pay the foregoing charges will commence five (5) days after Tenant's equipment is delivered to the Premises.

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4.02 Maintenance and Repair: Tenant will, at its expense, (a) keep the entire Premises, all improvements, utility lines and Tenant's or Landlord's fixtures and equipment at all times in good repair, order or condition; (b) replace all broken, damaged or missing personal property, fixtures or equipment; and (c) at the expiration of the term of this Lease, whether by lapse of time or otherwise, surrender the Premises in good repair, order and condition, ordinary wear and tear excepted, and loss by fire and other casualty excepted to the extent that provision for such exception may elsewhere be made in this Lease. Upon request of Landlord, Tenant will remove all signs and other identifying features from the Premises. Tenant's obligation to make repairs to the premises will include all repairs, whether ordinary or extraordinary, including structural repairs to the foundation, floors, walls and roof.

4.03 Alterations: Tenant shall not make any change in, alteration of, or addition to any part of the Premises, or remove any of the buildings or building fixtures without, in each instance, obtaining the prior written consent of Landlord and complying with all governmental rules, ordinances and regulations.

4.04 Surety: Before commencement of any construction or installation of any structure, fixture, equipment or other improvement on the Premises, or of any repairs, alterations, additions, replacement or restoration in, on or about the Premises, Tenant will give Landlord written notice specifying the nature and location of the intended work and the expected date of commencement. Tenant will deposit with Landlord, if requested by Landlord, a certificate or other evidence satisfactory to Landlord that Tenant has obtained a bond or that Tenant's building contractor, if any, has furnished a bond in favor of Landlord, with a surety approved by Landlord, guaranteeing the performance and completion of all work free and clear of all liens arising from such work. Landlord reserves the right to withhold its approval of any proposed construction, improvement, repair, alteration or replacement and, without limiting the generality of the foregoing, may require as a condition of its approval that it be permitted to review and approve any contract entered into by Tenant regarding such notices as may be necessary to protect Landlord against liability for liens and claims.

4.05 Liens Against Property: Nothing in this Lease will authorize Tenant to do any act which will in any way encumber the title of Landlord to the Premises. The interest or estate of Landlord or the fee owner in the Premises, if Landlord is not the fee owner, will not in any way be subject to any claim by lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Tenant. Tenant will not permit the Premises to become subject to any mechanics', laborers' or materialsmen's lien for labor or material furnished to Tenant in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction of, or sufferance of, Tenant.

If any lien is filed against the Premises or Tenant's interest in this Lease, at Landlord's option, Tenant will either pay the amount of the lien in full or will, upon demand of Landlord, provide and pay for a non-cancelable bond, placed with a reputable company, approved by Landlord, in an amount deemed sufficient by Landlord, insuring the interest of Landlord and any mortgagee from any loss by reason of the filing of such lien. Tenant will immediately pursue in good faith its legal remedies to remove a lien on the Premises.

4.06 Assignment by Tenant: Tenant will not allow or permit any transfer of this Lease or any interest in this Lease by operation of law, or assign, convey, mortgage, pledge or encumber this Lease or any interest in this Lease, or permit the use or occupancy of the Premises or any part thereof without, in each case, obtaining Landlord's prior written consent. No assignment (with or without Landlord's consent) will release Tenant from any of its obligations in this Lease. Tenant will also assign its interest in the Security Deposit if Landlord consents to an assignment of this Lease. Notwithstanding the foregoing, Landlord shall consent to an assignment by Tenant of his rights and interest in this Lease if the Tenant complies with the terms and conditions of the Franchise Agreement pertaining to the assignment of the Franchise Agreement.

4.07 **Franchise Agreement:** Tenant will comply with and perform all covenants contained in the Franchise Agreement. Tenant's breach of any of the terms and covenants of the Franchise Agreement will also constitute a breach of this Lease. Termination, default or revocation of the Franchise Agreement for any reason, either in whole or in part, will also terminate this Lease, without further notice being required.

ARTICLE 5 FIXTURES AND EQUIPMENT

5.01 **Fixtures:** All buildings and improvements and all plumbing, heating, lighting, electrical and air conditioning fixtures and equipment and all other articles of property which, at the date Tenant takes possession of the Premises, are the property of Landlord or of the fee owner of the premises are and will remain a part of the real estate and be considered to be leased in this Lease. Any additions, alterations or remodeling of improvements made to the Premises will immediately become the property of Landlord and will not be removed by Tenant at the termination of this Lease by lapse of time or otherwise.

5.02 **Removal of Tenant's Property:** At or prior to the termination of this Lease, whether by lapse of time or otherwise, Tenant will, subject to any rights of Landlord under the Franchise Agreement, remove all of its personal property and trade fixtures from the Premises and will repair any damage to the Premises which may have been caused by such removal.

ARTICLE 6 INSURANCE AND DAMAGE TO PROPERTY

6.01 **Liability Insurance:** Tenant will pay for and maintain during the entire term of this Lease the following insurance:

(A) Worker's Compensation Insurance prescribed by law in the state in which the Premises are located and Employer's Liability Insurance with \$100,000 minimum limit. If the state in which the premises are located allows the option of carrying no Worker's Compensation, and Tenant chooses to exercise that option, Tenant shall nonetheless carry and maintain other insurance with limits at least equivalent with those established for the State Worker's Compensation law or as may be approved by the Landlord.

(B) Comprehensive General Liability Insurance in a form approved by Landlord, on an occurrence basis, with a combined single limit for Bodily Injury and Property Damage as described in Article 1.05.

(C) Fire Legal Liability Insurance with limits of \$500,000 per occurrence.

6.02 **Rental Insurance:** Tenant will maintain and keep in force rental insurance in an amount equal to not less than the total of one year's Basic Rent as specified in Article 1.02 of this Lease.

6.03 **Property Insurance:** Tenant will maintain and keep in force, all risk insurance, including flood, earthquake and earth movement coverage, upon the Premises, operational equipment, signs, furnishings, decor, plate glass and supplies, in a so-called replacement cost form obligating the insurer to pay the full cost of repair or replacement. It is intended that neither Landlord nor Tenant will be a co-insurer, and to that end, if the insurance proceeds are not adequate to rebuild the building or other improvements located on the Premises, Tenant will be obligated for the difference between the proceeds obtained and the actual cost of the restoration of the improvements on the Premises and fixtures and equipment.

6.04 **Placement and Policies of Insurance:** All insurance policies required to be carried in this Lease will name Landlord and any party designated by Landlord as additional insured. All policies will be effective on or prior to the date Tenant is given possession of the Premises for the purpose of installing equipment, and evidence of payment of Premiums and duplicate copies of policies of the insurance

required in this Lease will be delivered to Landlord at least thirty (30) days prior to the date that Tenant opens for business or thirty (30) days prior to the expiration dates of an existing policy of insurance. All policies of insurance will include as an additional insured any mortgagee, as its interest may appear, and will include provisions prohibiting cancellations or material changes to the policy until thirty (30) days prior written notice has been given to Landlord.

If Tenant should fail to obtain the required insurance, Landlord may, but need not, purchase the insurance, adding the premiums paid to Tenant's monthly rent. Tenant may authorize Landlord to purchase and to administer the required minimum insurance on Tenant's behalf. However, Landlord, by placement of the required minimum insurance, assumes no premium expense nor guarantees any losses sustained by Tenant. Landlord may relieve itself of all obligations with respect to the administration of the required insurance coverage by giving ten (10) days written notice to Tenant.

All insurance will be placed with a reputable insurance company licensed to do business in the state in which the Premises are located and, having a financial size category of XV, or a company acceptable to Landlord, and a policy holders rating of "A +" or "A" (excellent), as assigned by Alfred M. Best and Company, Inc. Tenant further agrees to increase the various insurance coverages specified above from time to time upon the written request of Landlord to meet changing economic conditions and requirements imposed upon Landlord under the Landlord's Head Lease and loan agreements, if any.

6.05 Repair and Replacement of Buildings: If the building on the Premises is damaged by fire or any other casualty, Landlord will, within a reasonable time from the date of the damage or destruction, repair or replace the building so that Tenant may continue in occupancy. Landlord's obligation to rebuild or restore the Premises will, however, be only to the extent of insurance proceeds recovered. Basic Rent required to be paid in this Lease will not abate during the period of untenantability. If the building cannot be replaced or repaired within a reasonable time due to the inability of Landlord to obtain materials and labor, or because of strikes, acts of God or governmental restrictions that would prohibit, limit or delay the construction, then the time for completion of the repair or replacement will be extended accordingly. However, in any event, if the repair or replacement of the building has not been commenced within a period of one (1) year from the date of the damage or destruction, Tenant or Landlord may, at their option, terminate this Lease. If any damage or destruction occurs during the last five (5) years of the term of this Lease to the extent of 50% or more of the insurable value of the building, Landlord may, by notice to Tenant within forty (40) days after the occurrence of the damage or destruction, in lieu of repairing or replacing the building, elect to terminate this Lease as of the date of the damage or destruction. Tenant hereby expressly waives and releases any and all claims against Landlord for damages in case of Landlord's failure to rebuild or restore the building in accordance with the provisions of this section. Tenant's sole remedy for any such failure will be to elect to terminate this Lease as of the date of occurrence of the damage or destruction. If the building and other improvements are not repaired, restored or replaced, for any reason, all proceeds of the fire and extended coverage insurance applicable to the building and other permanent improvements will be paid and given to Landlord. Tenant agrees to execute and deliver any release or other document Landlord may request to obtain the release or control of the proceeds.

If Landlord repairs and restores the premises, as required above, Tenant agrees to promptly repair, replace, restore or rebuild Tenant's leasehold improvements, equipment and furnishings ("Tenant's Improvements") in accordance with the current standards and specifications for McDonald's Restaurants upon notice from Landlord that the Premises are ready for Tenant's Improvements. Tenant agrees to submit for Landlord's approval, all plans and specifications for Tenant's Improvements to Landlord within 30 days after Landlord delivers its plans and specifications for the restored Premises to Tenant.

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ARTICLE 7 RIGHTS OF LANDLORD

7.01 Inspection by Landlord: Landlord or any authorized representative of Landlord may enter the Premises at all times during reasonable business hours for the purpose of inspecting the Premises.

7.02 Indemnity for Litigation: If Landlord becomes subject to any claim, demand or penalty or becomes a party to any suit or other judicial or administrative proceeding by reason of any act occurring on the Premises, or by reason of an omission with respect to the business or operation of the McDonald's Restaurant, Tenant will indemnify and hold Landlord harmless against all judgments, settlements, penalties, and expenses, including reasonable attorney's fees, court costs and other expenses of litigation or administrative proceeding incurred by or imposed on Landlord in connection with the investigation or defense relating to such claim or litigation or administrative proceeding. At the election of Landlord, Tenant will also defend Landlord.

Tenant will pay all costs and expenses, including reasonable attorney's fees, which may be incurred by Landlord in enforcing any of the covenants and agreements of this Lease. All such costs, expenses and attorney's fees will, if paid by Landlord, together with interest, be additional rent due on the next rent date after such payment or payments.

7.03 Waiver of Claims: Landlord and Landlord's agents and employees will not be liable for, and Tenant waives claims for, damage to persons or property sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises or the building of which they are a part, including, but not limited to, claims for damage resulting from: (a) equipment or appurtenances becoming out of repair; (b) Landlord's failure to keep the building or the Premises in repair; (c) injury done or occasioned by wind, water or other natural element; (d) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water and steam pipes, stairs, porches, railings or walks; (e) broken glass; (f) the backing up of any sewer pipe or downspout; (g) the bursting, leaking or running of any tank, tub, washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or Premises; (h) the escape of steam or hot water (it being agreed that all the foregoing are under the control of Tenant); (i) water being upon or coming through the roof, skylight, trapdoor, stairs, walks or any other place upon or near such building of the Premises or otherwise; (j) the falling of any fixture, plaster or stucco; (k) interruption of service of any utility.

7.04 Re-entry Upon Default: If (a) Tenant defaults in the payment of any installment of Basic Rent or Percentage Rent or any additional sum due in this Lease; (b) Tenant defaults in any of the covenants, agreements, conditions or undertakings to be performed by Tenant other than the payment of rent (Basic and Percentage Rent or additional charges) and such default continues for ten (10) days after notice in writing to Tenant; (c) Tenant defaults in any of the terms of the Franchise Agreement or if the Franchise Agreement should terminate, whether by lapse of time or otherwise; (d) proceedings in bankruptcy or for liquidation, reorganization or rearrangement of Tenant's affairs are instituted by or against Tenant; (e) a receiver or trustee is appointed for all or substantially all of Tenant's business or assets on the grounds of Tenant's insolvency; (f) a trustee is appointed for Tenant after a petition has been filed for Tenant's reorganization under the Bankruptcy Act of the United States; (g) Tenant makes an assignment for the benefit of its creditors; or (h) Tenant vacates or abandons the Premises, then in any of the above events, Landlord, at its election, may declare the term of this Lease ended and, either with or without process of law, re-enter, expel, remove and put out Tenant and all persons occupying the Premises under Tenant, using such force as may be necessary in so doing, and repossess and enjoy the Premises. Such re-entry and repossession will not work a forfeiture of the rents to be paid or terminate the covenants to be performed by Tenant during the full term of this Lease.

Upon the expiration of the term of this Lease by reason of any of the events described above, or in the event of the termination of this Lease or right to possession by summary dispossession proceedings or

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under any provision of law now or at any time in force, whether with or without legal proceedings, Landlord may, at its option, relet the Premises or any part for the account of Tenant and collect the rents therefor, applying them first to the payment of expenses Landlord may have in recovering possession of the Premises, including legal expenses and attorney's fees, and for putting the Premises into good order or condition or preparing or altering the same for re-rental, expenses, commissions and charges paid, assumed or incurred by Landlord in reletting the Premises, and then to the fulfillment of the covenants of Tenant in this Lease. Any such reletting may be for the remainder of the term of this Lease or for a longer or shorter period. In any case and whether or not the Premises or any part thereof is relet, Tenant will pay to Landlord the Basic Rent, any additional charges, and all other charges required to be paid by Tenant up to the time of termination of this Lease, or of recovery of possession of the Premises by Landlord, as the case may be. Thereafter, Tenant covenants and agrees, if required by Landlord, to pay to Landlord, until the end of the term of this Lease, the equivalent of the amount of all the Basic Rent reserved in this Lease and all other charges required to be paid by Tenant, less the net income of reletting, if any. These payments will be due and payable by Tenant to Landlord on the rent days above specified. In any of the circumstances described above, Landlord will have the election to recover against Tenant, as damages for loss of the bargain and not as a penalty, an aggregate sum which, at the time of such termination of this Lease, or of such recovery of possession of the Premises by Landlord, represents the then present worth of the excess, if any, of the aggregate of the Basic Rent and all other charges payable by Tenant in this Lease that would have accrued for the balance of the term over the aggregate rental value of the Premises for the balance of the term. Nothing in this Lease contained will limit or prejudice Landlord's right to prove and obtain as liquidated damages arising out of such breach or termination the maximum amount allowed by any statute or rule of law which may govern the proceeding in which such damages are to be proved, whether such amount be greater, equal to, or less than, the amount of the then present worth of the excess of the Basic Rent and all other charges payable by Landlord in this Lease over the rental value referred to above.

7.05 Holding Over: Tenant will not hold over beyond the expiration or sooner termination of the term of this Lease. If Tenant does hold over, it will give rise to a tenancy at the sufferance of Landlord upon the same conditions as are provided for in this Lease with a monthly rental for the period of such holding over which is double the monthly installment of Basic Rent and Percentage Rent last paid by Tenant during the term of this Lease, and interest thereon, as liquidated damages, and not as a penalty. Landlord's acceptance of any rent after holding over begins does not renew this Lease. This provision does not waive Landlord's rights of re-entry or any other right in this Lease resulting from Tenant's breach of the covenant not to hold over or any other breach in this Lease.

7.06 Remedies Cumulative: The remedies in this Lease granted to Landlord will not be exclusive or mutually exclusive, and Landlord will have such other remedies against Tenant as may be permitted in law or in equity at any time. Any exercise of a right of termination by Landlord will not be construed to eliminate any right of Landlord to damages on account of any default of Tenant.

7.07 Waiver: No delay or omission of Landlord to exercise any right or power arising from any default will impair any such right or power or will be construed to be a waiver of any such default or an acquiescence under this Lease. No waiver of any breach of any of the covenants of this Lease will be held to be a waiver of any other breach or waiver, acquiescence in or consent to any further or subsequent breach of the same covenant. The rights in this Lease given to receive, collect or sue for any rent, monies or payments or to enforce the terms, provisions and conditions of this Lease, or to prevent the breach or non-observance thereof, or to exercise any right or remedy in this Lease, will not in any way affect the right or power of Landlord to declare the term ended and to terminate this Lease because of any default in or breach of any of the covenants, provisions or conditions of this Lease.

7.08 Accord and Satisfaction: No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent in this Lease stipulated will be deemed to be other than on account of the earliest stipulated rent, nor will any endorsement or statement on any check or any letter accompanying any check

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or payment as rent be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided for in this Lease.

7.09 Right to Perform for Tenant: If Tenant should fail to perform any of its obligations under the provisions of this Lease, Landlord, at its option, may (but will not be required to) do the same or cause the same to be done. In addition to any and all other rights and remedies of Landlord, the cost incurred by Landlord in connection with such performance by Landlord will be an additional charge due from Tenant to Landlord, together with interest thereon at the maximum rate permitted by law in the state in which the Premises are located on the next rent date after such expenditure or, if there is no maximum rate permitted by law, at 15% per annum.

7.10 Condemnation: If the entire Premises are condemned under eminent domain, or acquired in lieu of condemnation, for any public or quasi-public use or purpose, all rentals and taxes or other charges will be paid to that date, and Tenant will have the right to make a claim for the value of its leasehold estate. Tenant will, also, have the right to claim and recover such compensation as may be separately awarded for any and all damage to Tenant's business by reason of the condemnation and for any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, equipment and other personal property. Tenant specifically waives and releases any claim it may have, however, for the value of the building, fixtures and other improvements on the Premises whether or not installed or paid for by Tenant. Tenant further agrees to subordinate any claim it may have to Landlord's claim for the value of the improvements.

If only a part of the Premises is taken or condemned and Landlord determines that the operation of a McDonald's Restaurant on the Premises is no longer economically feasible or desirable, Landlord may at any time, either prior to or within a period of sixty (60) days after the date when possession of the Premises will be required by the condemning authority, elect to terminate this Lease. If Landlord fails to exercise its option to terminate this Lease or will not have any such option, Landlord will (1) with reasonable promptness, make necessary repairs to and alterations of the improvements on the Premises for the purpose of restoring it to substantially the same use as that which was in effect immediately prior to such taking, to the extent that may be necessary by the condemnation; and (2) be entitled to the entire award for such partial taking. If Landlord does not elect to terminate this Lease, Tenant's Basic Monthly Rent will be reduced by a fraction, the numerator of which will be the total condemnation award or settlement and the denominator of which will be the fair market value of the Premises, prior to the taking, as determined by an independent appraiser selected by the Landlord.

7.11 Subordination and Non-Disturbance: This Lease and all of Tenant's rights, title and interest under the Lease will be subject, subordinated and inferior to the lien of any and all mortgages and to the rights of all parties under any sale and leaseback of the Premises and to any and all terms, conditions, provisions, extensions, renewals or modifications of any such mortgage or mortgages or sale and leaseback which Landlord or any grantee of Landlord (collectively hereafter called "Fee Owner") has or may place upon the Premises and the improvements thereon, in the same manner and to the same extent as if this Lease had been executed subsequent to the execution, delivery and recording of such mortgage or of the deed and lease under the sale and leaseback. This provision is intended to include the right of any grantee or Landlord under a sale and leaseback to further encumber the property with one or more mortgages, all of which are declared to be superior to the interest of Tenant in this Lease.

If a mortgagee or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in such mortgage, or in the event of the default under the Lease related to a sale and leaseback of the Premises, Tenant's right of possession will not be disturbed provided (a) Tenant is not then in default under this Lease and (b) Tenant attorns to such title holder. Tenant agrees that upon a mortgage foreclosure it will attorn to any mortgagee or assignee or any purchaser at the foreclosure sale (collectively called "Purchaser") as its Landlord and in the case of a default under the terms of the lease

used in a sale and leaseback, it will attorn to the Fee Owner of the Premises as its new Landlord and, in either event, this Lease will continue in full force and effect as a direct Lease between Tenant and such party under all of the terms of this Lease. If there is a foreclosure of a mortgage placed on the property by a grantee under a sale and leaseback, such attornment will be required only if, at the time of such foreclosure, the Lease used in the sale and leaseback is also in default.

The subordination of this Lease to any mortgagee of Fee Owner provided for in this Lease or to any Lease under a sale and leaseback arrangement will be automatic and self-operative, and no special instrument of subordination will be necessary. Without limiting such automatic and self-operative subordinations, however, Tenant will, on demand, at any time or times, execute, acknowledge and deliver to Fee Owner, without expense to Fee Owner, any and all instruments that may be necessary or proper to evidence the subordination of this Lease and all rights in this Lease to the lien of any such mortgage, or to any such lease under a sale and leaseback arrangement. If Tenant fails, at any time, to execute, acknowledge and deliver any such subordination instrument within five (5) days after receipt of the notice, in addition to any other remedies available, Landlord may execute, acknowledge and deliver the same as the attorney-in-fact on Tenant's behalf; and Tenant hereby irrevocably makes, constitutes and appoints Landlord, its successors and assigns, such attorney-in-fact for that purpose.

ARTICLE 8 MISCELLANEOUS

8.01 No Agency Created: Tenant will have no authority, express or implied, to act as agent of Landlord or any of its affiliates for any purpose. Tenant is, and will remain, an independent contractor responsible for all obligations and liabilities of, and for all loss or damage to, the Premises, including any personal property, equipment, fixtures or real property connected with them and for all claims or demands based on damage or destruction of property or based on injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of the McDonald's Restaurant located on the Premises.

8.02 Recording of Lease: Tenant will not record this Lease without the written consent of Landlord. However, upon the request of either party, the other party will join the execution of a memorandum or a so-called "short-form" of this Lease for the purpose of recordation. The memorandum or short form of this Lease will describe the parties, the Premises and the term of this Lease and will incorporate this Lease by reference. The party requesting execution of the memorandum will bear all costs for recording it.

8.03 Force Majeure: Whenever a period of time is provided in this Lease for either party to do or perform any act or thing, except the payment of monies, neither party will be liable for any delays due to strikes, lockouts, casualties, acts of God, war, governmental regulation or control or other causes beyond the reasonable control of the parties, and in any event the time period for the performance of an obligation in this Lease will be extended for the amount of time of the delay. This clause will not apply to, or result in, an extension of the term of this Lease.

8.04 Paragraph Headings: Headings in this Lease are for convenience only and are not to be construed as part of this Lease and will not be construed as defining or limiting in any way the scope or intent of the provisions of this Lease.

8.05 Invalidity of a Provision: If any term or provision of this Lease will to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease will not be affected, but each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law. If any material term of this Lease is stricken or declared invalid, Landlord reserves the right to terminate this Lease at its sole option.

8.06 Law Governing: The terms and provisions of this Lease will be governed by the laws of the State of Illinois.

2 3 5 2 0 8 0 0 1 0 1

8.07 Entire Agreement: This Lease and the Franchise Agreement will be deemed to include the entire agreement between the parties, and it is agreed that neither Landlord nor anyone acting in its behalf has made any statement, promise or agreement or taken upon itself any engagement whatever, verbally or in writing, in conflict with the terms of this Lease, or that in any way modifies, varies, alters, enlarges, or invalidates any of its provisions, or extends the term of this Lease, and that no obligations of Landlord will be implied in addition to the obligations expressed in this Lease. This agreement cannot be changed orally but only by an agreement in writing signed by Landlord and Tenant.

8.08 Parties Bound: The terms of this Lease will extend to and be binding upon the administrators, executors, heirs, assigns and successors of the parties, subject to the terms of Article 4.06.

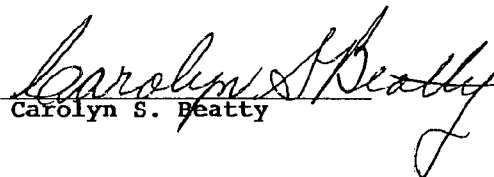
8.09 Notices or Demands: All notices to or demands upon Landlord or Tenant given under any of the provisions of this Lease will be in writing. Any notices or demands from Landlord to Tenant will be deemed to have been duly and sufficiently given if a copy has been delivered personally or mailed by United States registered or certified mail in an envelope properly stamped and addressed to Tenant at the address of the Premises. Any notices or demands from Tenant to Landlord will be deemed to have been duly and sufficiently given if mailed by registered or certified mail in an envelope properly stamped and addressed to Landlord at McDonald's Plaza, Oak Brook, Illinois 60521, Attention: Director, Real Estate Legal Department. Mailed notices shall be deemed received three (3) business days after being deposited in the U.S. Mail. Either party, by notice, may change the address to which notice will be sent, but all notices mailed to Tenant at the address of the restaurant on the Premises will be deemed sufficient.

9 7 0 3 0 8 0 0 1 8 1

To indicate their consent to this Operator's Lease the parties, or their authorized representatives or officers, have signed this document on the date indicated.

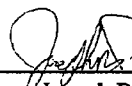
TENANT: Fredric E. Beatty
and Carolyn S. Beatty

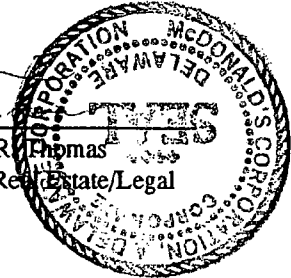

Fredric E. Beatty


Carolyn S. Beatty

LANDLORD:

By: _____


Joseph R. Thomas
Director of Real Estate/Legal



Date signed: April 9, 1993

Location code: 37-1074

Prepared by: MCA
(initial)

Date signed: May 15, 1993

37-1074
OL-WHOLE
(12-92)

9 22-0.2.0 8 0 0 0 0 1

ALL that certain parcel of land situate in Sandy Township, Clearfield County, Commonwealth of Pennsylvania being bounded and described as follows:

BEGINNING at a point on the centerline of Old State Route 0255 said point being located North 74 degrees 30 minutes 48 seconds West a distance of 75.15 feet from the southeast corner of land now or formerly Wal-Mart Stores, Inc.; thence along the centerline of Old State Route 0255 North 74 degrees 30 minutes 48 seconds West a distance of 156.10 feet to a point; thence through said right of way North 15 degrees 29 minutes 12 seconds East a distance of 25.00 feet to a point on the northerly right of way line of Old State Route 0255; thence through land now or formerly Wal-Mart Stores, Inc. North 19 degrees 19 minutes 52 seconds East a distance of 278.64 feet to a point; thence continuing through land now or formerly Wal-Mart Stores, Inc. South 70 degrees 40 minutes 08 seconds East a distance of 115.24 feet to a point; thence by the arc of a circle curving to the right having radius of 49.50 feet for an arc distance of 45.74 feet to a point; thence South 19 degrees 19 minutes 52 seconds West a distance of 233.54 feet to a point on the northerly right of way line of Old State Route 0255; thence through said right of way line South 15 degrees 29 minutes 12 seconds West a distance of 40.00 feet to a point at the place of beginning.

CONTAINING 46,006.837 square feet or 1.056 acres.

OUTLOT NO. 1 RECORDED ON APERTURE CARD 984, 2ND. JUNE, 1992.

THIS description is in accordance with a survey by John Robert Gales, Registered Surveyor, J.R. Gales and Associates, Inc., dated August 11, 1992 and last revised on December 16, 1992.

TOGETHER with those two certain access easements as set forth in that certain Access Easement Agreement between Wal-Mart Stores, Inc. and McDonald's Corporation, d/b/a Delaware McDonald's Corporation dated December 24, 1992 and recorded December 31, 1992.

9 7 0 9 0 8 0 0 1 0 1

LOCATION CODE: 37/1074

RENT SCHEDULE

For the term of this Lease, the Basic Rent will be \$8,625.00 per month, plus Percentage Rent of 10% of Monthly Gross Sales over \$86,250.00.

SCHEDULE B

9 3 0 9 0 8 10 7 1 0 1

ACCESS EASEMENT

THIS ACCESS EASEMENT is entered into as of the 24th day of December, 1992, by and between WAL-MART STORES, INC., a Delaware corporation whose address is 701 S. Walton Boulevard, Attn: Property Development, Bentonville, Arkansas 72716 ("Wal-Mart"); and McDONALD'S CORPORATION, dba DELAWARE McDONALD'S CORPORATION whose address is P.O. Box 66207, AMF O'Hare, Chicago, IL 60666 ("Grantee").

WITNESSETH:

WHEREAS, Wal-Mart is the owner of that certain tract or parcel of land containing 19.0 acres, more or less, situated in the Township of Sandy County of CLEARFIELD, State of PENNSYLVANIA, identified in part as Tract 1 on the site plan attached hereto as Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Grantee will be by the time this instrument is recorded the owner of that certain 1.0 acre tract or parcel of land in the same township, county, and state, which tract lies adjacent to Tract 1 and is identified as Tract 2 on Exhibit A and more fully described on Exhibit "B" attached hereto and made a part hereof, which tract Wal-Mart is current owner of and intends to convey fee simple title to Grantee by a warranty deed; and

WHEREAS, Grantee has requested from Wal-Mart, and Wal-Mart is desirous of granting to Grantee, nonexclusive easements for pedestrian and vehicular ingress and egress over and across a portion of Tract 1 and the location of directional signage, identified as the Access Area and Additional Access Area on Exhibit A and more fully described on Exhibit "C" attached hereto and made a part hereof ("Access Area" and "Additional Access Area");

NOW THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, Wal-Mart does hereby grant to Grantee a non-exclusive easement for vehicular and pedestrian ingress and egress over and across the Access Area and Additional Access Area so as to allow vehicular or pedestrian traffic access to and from Tract 2 and State Route

SCHEDULE C

Copy to operator

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

CIVIL DIVISION

No. 2004 - 1053 - CD

Issue No.

**ANSWERS TO INTERROGATORIES
AND CONTENTION
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT, BEATTY
RESTAURANT**

Code:

Filed on behalf of Defendant, Beatty
Restaurant Enterprises, Inc., t/d/b/a
McDonald's

Counsel of record for this party:

Christopher T. Lee, Esquire
PA I.D. # 62422

DICKIE, MCCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

CIVIL DIVISION

No. 2004 - 1053 - CD

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

**ANSWERS TO INTERROGATORIES AND CONTENTION INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT, BEATTY RESTAURANT**

1. Kindly set forth in detail the following information:
 - a. Your full name.
 - b. Any other names you have used or been known by.
 - c. Your date of birth.
 - d. Your marital status at the time of the incident.
 - e. Your current marital status.
 - f. Your present home address.
 - g. Your home address as of the day of the incident.
 - h. Your Social Security number.
 - i. Identify any and all persons who assisted in answering these interrogatories and/or the gathering of information for same.

ANSWER: a. Fred Beatty

b. N/A

c. - h. Objection. Defendant objects to the interrogatories contained in sub-sections "c" through "h" on the grounds that they are overbroad, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

i.. In addition to counsel, Beatty Restaurant Enterprises (hereinafter "Beatty") Employee Sue Moore assisted me in gathering information.

2. Please identify every person who you know or believe to have knowledge of or information relating to any facts, circumstances, relationships, or issues relating to this lawsuit and indicate the knowledge or information you believe each such person has and identify each and every document which reflects or related to the information requested in this interrogatory.

ANSWER: Interrogatory No. 3 is objected to on the basis that it is overly broad, unduly burdensome and not calculated to lead to the discovery of relevant or admissible evidence. Further, Interrogatory No. 3 seeks information that is protected from disclosure under the work product and/or attorney-client privileges. Without waiving said objections Defendant believes that the following individuals may have relevant information regarding this case:

Plaintiffs

Beatty Employee Debbie Jern

Husband-Plaintiff's treating dentists and physicians

3. Please identify each person you expect to call as a witness at trial, and for each person, state the following:

- (a) The subject matter or area on which each such person is expected to testify;
- (b) The substance of the facts or opinions to which each person is expected to testify; and
- (c) Identify each and every document which reflects or related to the information requested in this interrogatory.

ANSWER: This Defendant has not decided the witnesses on whom it will rely to prove its case. Defendant will supplement its response to this Interrogatory at an appropriate time.

4. Pursuant to Pa.R.C.P. 4003.5(a)(1)(a), please identify any person you expect to call as an expert witness at trial, and for each such person, state the following:

- (a) The subject matter or area on which each such person is expected to testify;
- (b) The substance of the facts or opinions to which each person is expected to testify;
- (c) A summary of the grounds for the opinion of each such person;
- (d) Each such persons background, training, experience, and other qualifications; and
- (e) Identify each and every document which reflects or related to the information requested in this interrogatory.

ANSWER: The Pennsylvania Rules of Civil Procedure do not contemplate disclosure of consultants or expert witnesses of this juncture of the litigation proceedings. Pursuant to said rules, expert disclosures will be made when appropriate and in a timely fashion.

5. Have you, your attorneys, agents or representatives or anyone acting on your behalf obtained from any person or persons any type of written or recorded statement, whether signed or unsigned, adopted or approved by such person or persons and concerning this lawsuit or any possible causes of the matter that is the basis of this lawsuit? If the answer to this Interrogatory is in the affirmative, state the following:

- (a) Whether the statement is in question and answer or negative form;
- (b) Whether the person giving it received a copy of the statement;
- (c) Whether the statement was signed;
- (d) If the statement was not signed, the method by which it was adopted or, approved;
- (e) The name and present address of the person by whom the statement was taken;
- (f) When the statement was taken;
- (g) Where the statement was taken;
- (h) Please attach a copy of such statement or of a transcript of such recorded statement to the answers to these interrogatories.

ANSWER: Yes. See recorded statement of Plaintiff attached hereto as Exhibit A.

6. Please state the names and present addresses of any witnesses to any of the events leading up to the incident, known to you, your agents, servants or employees, or known to your attorneys or representatives.

**ANSWER: Plaintiffs
Beatty Employee Debbie Jern**

7. Please state the names and addresses of any eye witnesses or of any witnesses in the vicinity, or present at the time and place of the incident, known to you, your agents, servants or employees or known to your attorneys or representatives.

ANSWER: Plaintiffs

8. Please state the names and present addresses of any witnesses to any of the events subsequent to the incident, known to you, your agents, servants or employees, or known to your attorneys or representatives.

ANSWER: Plaintiffs
Husband-Plaintiff's treating dentists and physicians
Beatty Employee Debbie Jern

9. Please state the names and present addresses of any witnesses who have any knowledge or any facts pertaining to the cause of the incident or any claim or defense raised who has not previously been identified.

ANSWER: None at this time.

10. Do you have in your possession any written statement given by either the Plaintiff or the Defendant and/or its agents and/or employees or any witness with knowledge relevant to this action? If so, attach a copy of the statement to these answers and also identify the person to whom the statement was given and the date and place it was given.

ANSWER: No.

11. Do you have in your possession a transcript of an oral statement given by the Defendant and/or its agents and/or employees or any witness with knowledge relevant to this action? If so, attach a copy of the statement to these answers and also identify the person to whom the statement was given and the date and place it was given.

ANSWER: No.

12. Do you have in your possession any notes of a conversation or statement given by the Defendant and/or its agents and/or employees or any witness with knowledge relevant to this action? If so, attach a copy of the notes to these answers and also identify the person who made the notes and the date and place they were made.

ANSWER: No.

13. Have you or any representative on your behalf conducted an investigation of the facts and circumstances surrounding the incident?

ANSWER: This Defendant objects to Interrogatory No. 13 on the basis that it seeks information that is protected from disclosure under the work product and/or attorney-client privileges.

Without waiving any objections, Defendant answers that this claim was investigated by Adjuster Fran Herman at GAB Robins.

14. If the answer to the preceding Interrogatory is in the affirmative, then please state:

- (a) The name, address and title of the person(s) who conducted such investigation;
- (b) The date(s) when such investigation was conducted;
- (c) The name and address of each and every person who prepared any report as a result of such investigation; and
- (d) Please state the name and address of the person(s) who has possession and custody of such report at the present time.

ANSWER: a. Fran Herman
GAB Robbins
One Oak Hill Center
Westmont, IL 60559
Adjuster

b. Ms. Herman conducted an investigation beginning in June 2003 through March 2004.

- c. See answer to subsection a above.
- d. See claims file attached hereto as Exhibit C.

15. Have you or any representative on your behalf obtained any reports from any person or entity in connection with this incident?

ANSWER: Objection. This interrogatory seeks information protected from disclosure by the attorney-client privilege and work product doctrine pursuant to Pa. R.C.P. 4003.5.

16. If the answer to the preceding Interrogatory is in the affirmative, then please state:

- (a) The name, address and title of the person, bureau, department, company or agency that made out said report(s);
- (b) The date of said report(s);
- (c) The substance of said report(s);
- (d) The name and address of the person(s), bureau, department, company or agency to which the report was mailed;
- (e) The name and address of the person(s) who has custody and possession of said reports at the present time.

ANSWER: Objection. This interrogatory seeks information protected from disclosure by the attorney-client privilege and work product doctrine.

17. Have you or any representative on your behalf made out any reports in connection with this incident?

ANSWER: Objection. This interrogatory seeks information protected from disclosure by the attorney-client privilege and work product doctrine. Without waiving any objections, Beatty employee Debbie Jern prepared an accident report in connection with the incident. The report is attached hereto as Exhibit B. See also the GAB Robins claims file which is attached hereto as Exhibit C.

18. If the answer to the preceding Interrogatory is in the affirmative, then please state:

- (a) The name, address and title of the person who made out said report(s);
- (b) The nature of such report(s);
- (c) The name and address of the persons who have possession and custody of said reports at the present time.

ANSWER: See Answer to Interrogatory Number 17.

19. Please state whether or not any photographs, videos, or surveillance videos have been taken by you, your agents, servants or employees, or any your attorneys or representatives, or by any professional photographer in connection with the incident and injuries complained of in Plaintiff's complaint and, if so, please state:

- (a) The date or dates when such were taken;
- (b) The name and present address of the party taking them;
- (c) Where they were taken;
- (d) The objects, subjects, particular site or view which each represents;
- (e) The present whereabouts of the photographs, videos, or surveillance videos and the name and address of whoever is in possession or custody thereof.

ANSWER: None.

20. Please state whether you, your agents, servants or employees, or your attorneys or representatives have any maps, plans, drawings, sketches, or any other literature or any physical exhibit or model relative to the incident. If so, describe in detail, and please state the name and address of whoever is in possession or custody thereof.

ANSWER: Objection. Defendant objects to Interrogatory Number 20 on the grounds that it is overbroad, vague and not reasonably calculated to lead to the discovery of admissible evidence.

21. Please state whether you have ever been investigated by any state regulatory or law enforcement agency and, if so, for such investigation state:

- (a) The date of the investigation;
- (b) Identify the agency or law enforcement agency involved;
- (c) State whether any violations of laws and/or regulations were charged and, if so what violations were alleged;
- (d) State what the final disposition on the charges were; and
- (e) State the date when the charges were finally resolved.

ANSWER: Objection. Defendant objects to Interrogatory Number 20 on the grounds that it is overbroad, vague, not limited in scope or time and not reasonably calculated to lead to the discovery of admissible evidence.

22. Did you or any of your agents and/or employees have any conversation with the Plaintiff at the scene of the incident (either prior to or immediately after the incident)?

ANSWER: No.

If your answer is yes, for each such conversation:

- (a) State when the conversation occurred;
- (b) State the substance of each such conversation;
- (c) State whether you have any notes or documents which relate in any way to the substance of the conversation; and
- (d) Identify any persons present.

ANSWER: N/A

23. After the date of the incident, have you or your agents and/or employees ever had any conversation with the Plaintiff concerning this incident?

ANSWER: Yes. See incident report prepared by Beatty Employee Debbie Jern attached hereto as Exhibit B.

If your answer is yes, for each such conversation:

- (a) State the date and place of the conversation;
- (b) State the substance of any such conversation;
- (c) State whether you have any notes or documents which relate in any way to the substance of the conversation; and
- (d) Identify all other persons present.

ANSWER: See incident report prepared by Beatty Employee Debbie Jern attached hereto as Exhibit B.

24. Please state in detail your recollection of the entire incident.

ANSWER: I have no first hand knowledge regarding the incident.

(i) CONTENTION INTERROGATORIES

25. Do you contend that the incident was the fault, in whole or in part, of either the Plaintiff or some other person or entity?

ANSWER: Discovery is continuing. Defendant will supplement this Answer to Interrogatory in the event such information becomes available.

26. If your answer to the preceding Interrogatory is affirmative, for each person or entity who or which you feel is partly or solely liable for the incident, please:

- (a) Identify the person or entity;
- (b) Describe all facts in support of your contention; and
- (c) Identify all documents in support of such contention.

ANSWER: N/A

27. Do you contend that the incident was the fault of the Plaintiff? If so, please identify with particularity either the intentional or negligent action of the Plaintiff.

ANSWER: Discovery is continuing. Defendant will supplement this Answer to Interrogatory in the event such information becomes available.

28. Do you contend that the Plaintiff assumed a risk in the happening of the Incident? If so, please identify with particularity all of your facts in support of your contention.

ANSWER: Discovery is continuing. Defendant will supplement this Answer to Interrogatory in the event such information becomes available.

29. Please identify with particularity all of the facts and information you have in support of your contentions set forth in your New Matter, at paragraphs 28 through 36, filed in this action.

ANSWER: Discovery is continuing. Defendant will supplement this Answer to Interrogatory in the event such information becomes available.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Please produce all documents identified in response to the foregoing Interrogatories.

RESPONSE: See Exhibits A, B and C attached hereto.

2. Please produce all documents, including but not limited to, photographs, notes, reports, diagrams, illustrations, statements, videotapes, audiotapes, diaries, calendars, day planners, computer records, and correspondence concerning and/or otherwise relating to the allegations contained in the Plaintiff's Complaint, the claims arising therefrom, and any defenses or counterclaims claimed by the Defendant.

RESPONSE: Objection. This interrogatory seeks information protected from disclosure by the attorney-client privilege and work product doctrine. Defendant further objects on the grounds that the Request is overbroad, vague and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objections, see Response to Request Number 1 above.

3. Please attach copies of your entire investigative file and/or your insurance carrier's investigative file including, but not limited to, any and all investigative reports, incident reports, witness statements, statements made by any of the parties, inter-office memoranda, correspondence, notes, documents or any other matter whatsoever containing information relative to the case and incident in question, as allowed by Pennsylvania Rule of Civil Procedure 4003.3.

RESPONSE: Objection. This interrogatory seeks information protected from disclosure by the attorney-client privilege and work product doctrine. Defendant further objects on the grounds that the Request is overbroad, vague and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objections, to the extent Interrogatory No. 5 seeks non-privileged information, see Response to Request Number 1 above, specifically Exhibit C which is the redacted investigative file of GAB Robins.

4. Please attach copies of all drawings, depictions, and photographs of either the scene of the incident or the area surrounding the scene of the incident, and of the Plaintiff after the incident. If you have photographs, please attach color copies or make arrangements to have duplicates of the photographs made at the expense of the Plaintiff.

Request. **RESPONSE: Defendant has no documents which are responsive to this**

5. Please attach copies of all statements, signed statements, transcripts or recorded statements or interviews of any person or witness relating to, referring to, or describing any of the events described in Plaintiff's Complaint.

RESPONSE: See Exhibits A and B attached hereto.

6. Please attach copies of all documents, correspondence, maps, videotapes, photographs, or other drawings, sketches, diagrams, reports, police reports, or writings in the custody or control of the parties to whom this request is addressed or their attorneys or insurers, which relate to the subject matter of this litigation.

RESPONSE: Objection. This interrogatory seeks information protected from disclosure by the attorney-client privilege and work product doctrine. Defendant further objects on the grounds that the Request is overbroad, vague and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objections, see Response to Request Number 1 above.

7. Please attach copies of all documents prepared by the parties, or by any insurer, representative, agent, or anyone on behalf of said party, except their attorney, during the investigation of the incident in question or any of the events or allegations described in Plaintiff's Complaint. Such documents shall include any documents made or prepared up through the present time.

RESPONSE: Objection. This interrogatory seeks information protected from disclosure by the attorney-client privilege and work product doctrine. Defendant further objects on the grounds that the Request is overbroad, vague and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objections, to the extent Interrogatory No. 5 seeks non-privileged information, see Response to Request Number 1 above, specifically Exhibit C which is the redacted investigative file of GAB Robins.

8. Please attach copies of all expert opinions, reports, summaries, or other writings in the custody or control of the parties to whom this request is addressed, their attorneys, or insurers, which relate to the subject matter of this litigation.

RESPONSE: The Pennsylvania Rules of Civil Procedure do not contemplate disclosure of consultants or expert witnesses of this juncture of the litigation proceedings. Pursuant to said rules, expert disclosures will be made when appropriate and in a timely fashion.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By CT Lee/es
Christopher T. Lee, Esquire
Pa. I.D. #62422

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

*Attorneys for Defendant, Beatty Restaurant
Enterprises, Inc., t/d/b/a McDonald's*



GAB Robins Risk Management Services, Inc.

file

One Oak Hill Center
Suite 201
Westmont, IL 60559
T: 630-203-2410
F: 630-325-5240

Report: FIRST

March 8, 2004

ARCH INSURANCE GROUP
ATTN: **BRENDAN HENRY,**
VICE PRESIDENT

RMS INSURANCE
1415 COLLUM PLACE
GARDEN CITY, NY 11530
(516) 742-8585, FAX (516) 742-5678
BHENRY@RMSINSURANCE.COM

CC: BRIAN WAKEFIELD,
ASSISTANT VICE PRESIDENT
ARCH INSURANCE GROUP
6400 S. FIDDLER'S GREEN CIRCLE,
SUITE 1977
INGLEWOOD, CO 80111
(303) 218-2129, FAX (303) 218-2124
BWAKEFIELD@ARCHINSURANCE.COM

Program	RMS BROKERAGE/ ARCH MCDONALD'S
GAB File No.	24120-33768
Insured	FRED & CAROLYN BEATTY
Claimant	PETER NAKOSKI
Loss Location	DUBOIS, PA
Agency	
Date Reported	05/05/03
Litigation	NO
Date of Claim	05/05/03

COVERAGE:

Policy number RSCGL00103 has a limit of \$1 million per person loss with a policy period of 10/01/02 through 09/30/03 and affords coverage to the store number 12375, located at State Route 255, Wal-Mart Plaza, Dubois, PA 15801.

FACTS:

The claimant, a 39 year-old male, purchased French fries at the insured's drive-thru window. He brought the food home, began eating and bit into a pin screw that had been cooked inside one of the French fries.

LIABILITY



24120-33768

-2-

03-08-04

Injury/Damages

The claimant first sought treatment with Dr. Shok on 05/07/03, for pain in the upper and lower left front teeth number 9, 10, 23 and 24 (pre-accident dental records show no previous treatment for the involved teeth). Dr. Shok referred the claimant to an oral surgeon for consultation in order to attempt to identify the source of the pain.

On 05/09/03, the claimant consulted with Dr. Rice. Dr. Rice noted that due to the severity of the injury/pain to these same four teeth, it might take some time to realize what plans for treatment would be made. By 05/20/03, the claimant's pain persisted, and Dr. Shok saw him on an emergency basis. He concluded that root canal surgeries would be needed on all four teeth. All four root canals were completed by 06/19/03.

The claimant then sought treatment from Dr. Waldman, D.M.D., a specialist in prosthodontics on 07/07/03. Dr. Waldman recommended restoration of all four teeth. By the end of October 2003, apicoectomies were performed on all four teeth. In November, impressions were taken for crowns, and a bleaching procedure was conducted, in an attempt to match the natural teeth to the crowns to be applied. By February, 2004, all four crowns had been installed.

The claimant's mouth is numb in the area of the damaged teeth and Dr. Waldman's opinion is that the numbness is permanent in nature. The plaintiff is also claiming that the teeth are discolored at the gum line and that the gum line has receded on all four teeth.

Specials

Dr. Waldman	\$ 4,660.00
Wal-Mart Pharmacy	\$ 195.16
Dr. Shok	\$ 3,540.00
Dr. Rice/Dr. Arlick	\$ 1,675.00
Total	\$10,095.16



24120-33768

-3-

03-08-04

Dr. Waldman indicated that the possibility of future treatment exists. Such treatment may include re doing the crowns or dental implants. The present cost for these treatments ranges from \$4000.00 to \$12,000.00.

Fran Herman,
Adjuster

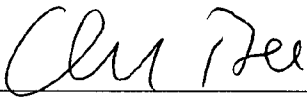
FH/lm

CERTIFICATE OF SERVICE

I, Christopher T. Lee, Esquire, hereby certify that true and correct copies of the foregoing Motion for Summary Judgment have been served this 2 day of November, 2006, by U.S. first-class mail, postage prepaid, to all counsel of record:

Hal K. Waldman, Esquire
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
Attorneys for Plaintiff

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Christopher T. Lee, Esquire

*Attorneys for Defendant, McDonald's
Corporation*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

CIVIL DIVISION

No. 2004 - 1053 - CD

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2006, it is hereby
ORDERED, ADJUDGED and DECREED that Defendant, McDonald's Corporation's Motion
for Summary Judgment is hereby GRANTED and McDonald's Corporation is dismissed from
this case with prejudice and it shall be stricken from the caption.

FILED
NOV 03 2006
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

CIVIL DIVISION

No. 2004 - 1053 - CD

Issue No.

MOTION FOR PROTECTIVE ORDER

Code:

Filed on behalf of Defendant, McDonald's
Corporation

Counsel of record for this party:

Christopher T. Lee, Esquire
PA I.D. # 62422

DICKIE, MCCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED NO
m 110:39/24 CC
NOV 06 2006 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

CIVIL DIVISION

No. 2004 - 1053 - CD

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

MOTION FOR PROTECTIVE ORDER

AND NOW, comes the Defendant, McDonald's Corporation, by and through its counsel, Dickie, McCamey & Chilcote, P.C., and moves this Court for an Order prohibiting Plaintiffs' counsel from conducting the depositions of McDonald's Corporation, Inc.'s corporate representative for the following reasons:

1. Plaintiffs alleged, *inter alia*, that on May 5, 2003, Plaintiff Peter Nakoski, was a business invitee of the Defendant, Beatty Restaurant, McDonald's Restaurant at Wal-Mart Plaza, Route 255, DuBois, Pennsylvania 15801.

2. Plaintiffs allege that Peter Nakoski purchased take out food from said restaurant and as he began to eat the french fries he purchased, he bit into a screw or other hard metal object, causing severe, serious and permanent injuries.

3. McDonald's Corporation has filed a Motion for Summary Judgment on the basis that the restaurant in question was not owned, operated or controlled by McDonald's. Instead, the restaurant is owned, operated, controlled and maintained by Beatty Restaurants Enterprises.

4. McDonald's Corporation has supplied an Affidavit by Geneace Williams, counsel for McDonald's Corporation, which sets forth that McDonald's Corporation did not own the business, operate the business, maintain the business, sell any product at or to the business, manufacture, process, or repair any product at or to their business and/or supply any product at or to the business.

5. McDonald's Corporation has no interest in this matter and thus should not be in this case. Further, McDonald's corporate office is located in Oak Brook, Illinois.

6. Plaintiff has requested the deposition of a corporate designee of McDonald's Corporation to take place in Pittsburgh at Plaintiffs' counsel's office.

7. Pursuant to Pa.R.Civ.P. 4012, this Court is empowered to enter an order to protect a party from discovery which is overly burdensome, irrelevant, or unnecessary.

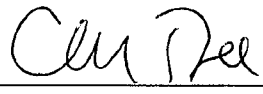
8. Given that McDonald's Corporation has filed a Motion for Summary Judgment, McDonald's requests that this Court enter an order precluding the deposition of the McDonald's corporate representative from going forward pending resolution of its motion.

9. Further, McDonald's requests that should this Court permit the deposition of a representative of McDonald's be allowed to proceed, that this Court order that the deposition be conducted at a place and time in Illinois that is convenient to the deponent.

WHEREFORE, McDonald's Corporation respectfully requests that this Court prohibit Plaintiffs' counsel from taking the deposition of McDonald's Corporation's corporate designee in this matter.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Christopher T. Lee, Esquire
Pa. I.D. #62422

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

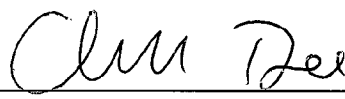
*Attorneys for Defendant, McDonald's
Corporation*

CERTIFICATE OF SERVICE

I, Christopher T. Lee, Esquire, hereby certify that true and correct copies of the foregoing Motion for Protective Order have been served this 3 day of November, 2006, by U.S. first-class mail, postage prepaid, to all counsel of record:

Hal K. Waldman, Esquire
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
Attorneys for Plaintiff

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Christopher T. Lee, Esquire

*Attorneys for Defendant, McDonald's
Corporation*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

CIVIL DIVISION

No. 2004 - 1053 - CD

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2006, it is hereby
ORDERED, ADJUDGED and DECREED that Defendant, McDonald's Corporation's Motion
for Protective Order is hereby GRANTED and the deposition of the corporate representative of
McDonald's Corporation is hereby stayed pending its Motion for Summary Judgment being
heard by the Court.

_____J

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

CIVIL DIVISION

No. 2004 - 1053 - CD

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

SCHEDULING ORDER

AND NOW, to-wit, this _____ day of _____, 2006, upon
consideration of McDonald's Corporation's request for an expedited and telephonic hearing on
its Motion for Protective Order, it is hereby ORDERED as follows:

The request is hereby granted and the Court will conduct a telephonic hearing on
the _____ day of _____, 2006, at _____M. Conference call arrangements
shall be made by counsel for McDonald's Corporation.

J

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

CIVIL DIVISION

No. 2004 - 1053 - CD

Plaintiff,

v.

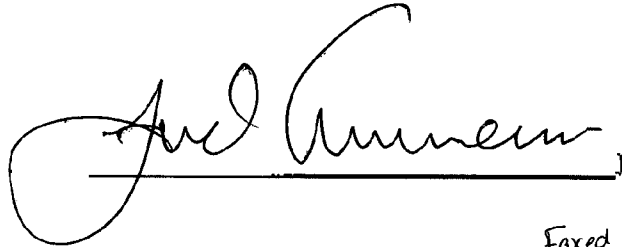
McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

SCHEDULING ORDER

AND NOW, to-wit, this 6th day of November, 2006, upon
consideration of McDonald's Corporation's request for an expedited and telephonic hearing on
its Motion for Protective Order, it is hereby ORDERED as follows:

The request is hereby granted and the Court will conduct a telephonic hearing on
the 7th day of November, 2006, at 10 A.M. Conference call arrangements
shall be made by counsel for McDonald's Corporation.



FILED
9/12/2006
NOV - 6 2006
Faxed by Judge Ammerman's Office to AAs: C. Lee H. Waldman
mailed copy to ICC AAs: C. Lee H. Waldman
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11-6-2006

..... You are responsible for serving all appropriate parties.

.. X .. The Prothonotary's office has provided service to the following parties:

..... Plaintiff(s) X Plaintiff(s) Attorney Other

..... Defendant(s) X Defendant(s) Attorney

..... See Instructions:

FILED

NOV - 6 2006

William A. Shaw
Prothonotary/Clerk of Courts

FILED 2cc:Atys:
019:50/60 Lee Smith
NOV 08 2006 Waidman

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

PETER NAKOSKI and
KATHERINE NAKOSKI

VS.

NO. 04-1053-CD

MCDONALD'S CORPORATION and
BEATTY RESTAURANTS ENTERPRISES,
INC., t/d/b/a MCDONALD'S

O R D E R

AND NOW, this 7th day of November, 2006, following argument by telephone conference call on the Motion for Protective Order filed on behalf of Defendant McDonald's Corporation; with the Court also referencing the Motion for Summary Judgment filed on behalf of Defendant McDonald's Corporation on November 3, 2006; in consideration of the issues, it is the ORDER of this Court as follows:

1. Argument on the Motion for Summary Judgment shall be scheduled for Friday, January 12, 2007, at 1:30 p.m. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania;

2. The Plaintiff shall continue engaging in discovery for sixty (60) days from this date relative the Motion for Summary Judgment;

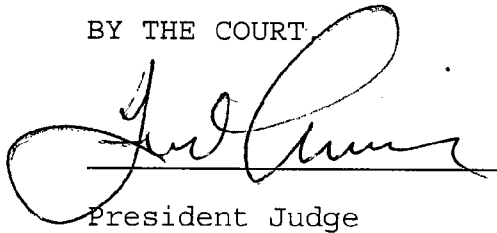
3. The Motion for Protective Order is hereby temporarily granted;

4. Following the expiration of the 60-day discovery

period as set forth above, in the event that the Plaintiffs believe that they are unable to proceed to defend the Motion for Summary Judgment without a deposition of a McDonald's corporate designee, the Plaintiffs shall file a motion or petition with the Court setting forth the reasons why the Protective Order should be lifted and the deposition should take place;

5. In the event a motion or petition is filed to lift the Temporary Protective Order, the Court recognizes that the Court may have to reschedule argument on the Motion for Summary Judgment.

BY THE COURT

A handwritten signature in dark ink, appearing to read "J. J. [unclear]", is written over a horizontal line. The signature is fluid and cursive.

President Judge

FILED

NOV 08 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/8/20

 You are responsible for serving all appropriate parties.

 X The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

<p>PETER NAKOSKI and KATHERINE NAKOSKI, his wife,</p> <p>Plaintiffs,</p> <p>v.</p> <p>McDONALD'S CORPORATION and BEATTY RESTAURANTS ENTERPRISES, INC., t/d/b/a MCDONALD'S,</p> <p>Defendants.</p>	<p>CIVIL DIVISION</p> <p>2004 - 1053- CD</p> <p>Issue No.</p> <p>ANSWER AND NEW MATTER</p> <p>Code:</p> <p>Filed on behalf of Defendant, McDonald's Corporation</p> <p>Counsel of record for this party:</p> <p>Christopher T. Lee, Esquire PA I.D. # 62422</p> <p>DICKIE, McCAMEY & CHILCOTE, P.C. Firm #067 Two PPG Place, Suite 400 Pittsburgh, PA 15222-5402</p> <p>(412) 281-7272</p> <p><u>JURY TRIAL DEMANDED</u></p>
---	--

FILED *no cc*
m/1:333d
JAN 05 2007 *UM*

William A. Shaw
Prothonotary/Clerk of Courts

Beatty Restaurant Enterprises is headquartered at 118 W. Long Avenue. The correct address for Beatty Restaurant Enterprises headquarters is 112 Dixon Avenue, P.O. Box 543, DuBois, Pennsylvania, 15801.

4. The allegations contained in Paragraph 4 contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the said allegations are denied and strict proof is to be made at the time of trial.

5. The allegations contained in Paragraph 5 contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the said allegations are denied and strict proof is to be made at the time of trial.

6. The allegations contained in Paragraph 6 are admitted.

7. The allegations contained in Paragraph 7 contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the said allegations are denied and strict proof is to be made at the time of trial.

8. The allegations contained in Paragraph 8 contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the said allegations are denied and strict proof is to be made at the time of trial. By way of further response, Defendant Beatty owned and operated the subject restaurant at the time the alleged incident.

9. The allegations contained in Paragraph 9 contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the said allegations are denied and strict proof is to be made at the time of trial.

10. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of

Plaintiffs' Complaint. Consequently, said allegations are denied and strict proof thereof is demanded at the time of trial.

11. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of Plaintiffs' Complaint. Consequently, said allegations are denied and strict proof thereof is demanded at the time of trial.

12. The allegations set forth in Paragraph 12 of Plaintiffs' Complaint state conclusions of law to which no response is required. To the extent a response is deemed necessary, the allegations contained therein are denied and strict proof is to be made at the time of trial.

13. The allegations set forth in Paragraph 13 of Plaintiffs' Complaint state conclusions of law to which no response is required. To the extent a response is deemed necessary, the allegations contained therein are denied and strict proof is to be made at the time of trial.

14. The allegations set forth in Paragraph 14 of Plaintiffs' Complaint state conclusions of law to which no response is required. To the extent a response is deemed necessary, the allegations contained therein are denied and strict proof is to be made at the time of trial.

15. The allegations set forth in Paragraph 15 of Plaintiffs' Complaint state conclusions of law to which no response is required. To the extent a response is deemed necessary, the allegations contained therein are denied and strict proof is to be made at the time of trial.

16. The allegations set forth in Paragraph 16 of Plaintiffs' Complaint state conclusions of law to which no response is required. To the extent a response is deemed necessary, the allegations contained therein are denied and strict proof is to be made at the time of trial.

17. The allegations contained in Paragraph 17 of Plaintiffs' Complaint are denied. As to Plaintiffs' averments of injury and damage contained in Paragraph 17, including subparagraphs (a) through (t), this Defendant is without knowledge or information sufficient to form a belief as to the truth of said averments, and hence, said averments are denied and strict proof thereof is demanded at the time of trial.

18. The allegations contained in Paragraph 18 of Plaintiffs' Complaint are denied. As to Plaintiffs' averments of injury and damage, this Defendant is without knowledge or information sufficient to form a belief as to the truth of said averments, and hence, said averments are denied and strict proof thereof is demanded at the time of trial.

19. The allegations contained in Paragraph 19 of Plaintiffs' Complaint are denied. As to Plaintiffs' averments of injury and damage, this Defendant is without knowledge or information sufficient to form a belief as to the truth of said averments, and hence, said averments are denied and strict proof thereof is demanded at the time of trial.

20. The allegations contained in Paragraph 20 of Plaintiffs' Complaint are denied. As to Plaintiffs' averments of injury and damage, this Defendant is without knowledge or information sufficient to form a belief as to the truth of said averments, and hence, said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, this Defendant respectfully requests that this Court enter judgment in its favor and against the Plaintiffs together with costs and such further relief as this Court deems appropriate.

COUNT I
PETER NAKOSKI
V
BEATTY RESTAURANT ENTERPRISES, INC.

21. In response to Paragraph 21 of Plaintiffs' Complaint, this Defendant hereby incorporates by reference as set forth herein as full response to Paragraphs 1 through 20 in their entirety.

22. The allegations set forth in Paragraph 22 of Plaintiffs' Complaint, including subparagraphs (a) through (i), state conclusions of law to which no response is required. To the extent a response is deemed necessary, the allegations contained in Paragraph 22 of Plaintiffs' Complaint, including subparagraphs (a) through (i), are denied and strict proof is to be made at the time of trial.

WHEREFORE, this Defendant respectfully requests that this Court enter judgment in its favor and against the Plaintiffs together with costs and such further relief as this Court deems appropriate.

COUNT II
PETER NAKOSKI
V
BEATTY RESTAURANT ENTERPRISES, INC.

23-24. The averments set forth in Paragraphs 23 and 24 of Plaintiffs' Complaint are directed toward a party other than the undersigned Defendant such that no response is required. To the extent a response is deemed necessary said allegations are denied and strict proof is to be made at the time of trial.

WHEREFORE, this Defendant respectfully requests that this Court enter judgment in its favor and against the Plaintiffs together with costs and such further relief as this Court deems appropriate.

COUNT III
KATHERINE NAKOSKI
V
MCDONALD'S CORPORATION AND BEATTY RESTAURANT ENTERPRISES, INC.

25. In response to Paragraph 25 of Plaintiffs' Complaint, this Defendant hereby incorporates by reference as set forth herein as full response to Paragraphs 1 through 24 of Plaintiffs' Complaint in their entirety.

26. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of Plaintiffs' Complaint. Consequently, said allegations are denied and strict proof thereof is demanded at the time of trial.

27. The allegations contained in Paragraph 27 of Plaintiffs' Complaint are denied. As to Plaintiff, KATHERINE NAKOSKI's, averments of injury and damage, this Defendant is without knowledge or information sufficient to form a belief as to the truth of said averments, and hence, said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, this Defendant respectfully requests that this Court enter judgment in its favor and against the Plaintiffs together with costs and such further relief as this Court deems appropriate.

NEW MATTER

28. Defendant denies that there was any defect on the premises or contained in the fries allegedly purchased and consumed by Plaintiff.

29. This Defendant avers that any defective condition on/of its property was open and obvious.

30. This Defendant avers any actual or constructive notice of any allegedly defective condition.

31. This Defendant avers as an affirmative defense that husband-Plaintiff suffered from a pre-existing condition.

32. Plaintiffs' injuries and/or damages, if any, were caused by conduct of entities other than this Defendant and for whose conduct this Defendant is not responsible for.

33. Plaintiffs have failed to state a claim upon which relief can be granted.

34. To the extent justified by the facts developed during discovery or at the time of trial, this Defendant raises as an affirmative defense that PlaintiffS have failed to mitigate their damages.

35. Defendant does not own the subject restaurant.

36. Defendant does not operate the subject restaurant.

37. Defendant does not have the right to hire, discharge or discipline employees of Beatty;

38. Defendant does not pay the utilities for the restaurant.

39. Defendant does not sell any product at or to Beatty.

40. Defendant does not file a tax return for or on behalf of the subject restaurant.

41. Defendant does not manufacture, process or prepare any product for sale at the subject restaurant.

42. Defendant does not supply any product, nor did it own or operate any business which supplies products to the subject restaurant.

43. Defendant does not control the day-to-day activities necessary to carrying on the business operations of the restaurant.

WHEREFORE, this Defendant respectfully requests that this Court enter judgment in its favor and against the Plaintiffs together with costs and such further relief as this Court deems appropriate.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P. C.

By: _____

Christopher T. Lee, Esquire
Pa. I.D. #62422

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

*Attorney for Defendant McDonald's
Corporation*

VERIFICATION

I, Christopher T. Lee, Esquire, hereby state that I am the counsel for Defendant, McDONALD'S CORPORATION, and that as such being authorized so to do, state that the facts contained in the within Answer and New Matter, are true and correct, not from my own information, but from information supplied to me by the defendants, and that a verification by defendants will be supplied at a later date.



Christopher T. Lee, Esquire
Attorney for Defendant
McDonald's Corporation

Date

1/5/07

CERTIFICATE OF SERVICE

I, Christopher T. Lee, Esquire, hereby certify that true and correct copies of the foregoing Answer and New Matter have been served this 5th day of January, 2007, by U. S. Mail, first class, postage pre-paid, to counsel of record listed below:

Hal K. Waldman
Hal K. Waldman & Associates
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, Pennsylvania 15222

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Christopher T. Lee, Esquire

Attorneys for McDonald's Corporation

FILED

JAN 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

vs.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT
ENTERPRISES, INC. t/d/b/a
MCDONALD'S,

Defendants.

CIVIL DIVISION

No.: 2004-1053-CD

**MOTION TO LIFT
PROTECTIVE ORDER**

Filed on Behalf of Plaintiffs

Counsel of Record for this Party

HAL K. WALDMAN, ESQUIRE
PA I.D. #: 26514

Hal K. Waldman & Associates
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

JURY TRIAL DEMANDED

FILED No. cc

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JAN 08 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.: 2004-1053-CD
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

MOTION TO LIFT PROTECTIVE ORDER

AND NOW, come the Plaintiffs Peter Nakoski and Katherine Nakoski, husband and wife, by and through their counsel, Hal K. Waldman & Associates, and files this motion to lift the protective order and in support thereof state as follows.

1. Defendant's Motion for Summary Judgment is premature as the pleadings remain open as McDonald's Corporation has not filed an answer to Plaintiff's Complaint in Civil Action and the pleadings therefore are not closed.
2. This case arises out of an incident in which Plaintiff Peter Nakoski was a business invitee of the Defendants, McDonald's Corporation and Beatty Restaurant Enterprises, Inc. Plaintiff purchased french fries from Defendants' restaurant and as he began to eat the french fries he purchased, he bit into a screw or other hard metal object, causing severe, serious and permanent injuries.

3. Defendant McDonald's Corporation has filed a Motion for Summary Judgment alleging that McDonald's Corporation did not own, control, or maintain the subject restaurant and fryer.

4. In conjunction with the filing of its Motion for Summary Judgment, McDonald's Corporation also filed a Motion for Protective Order to preclude Plaintiff from deposing a corporate designee of McDonald's relative to the Motion for Summary Judgment.

5. This Honorable Court issued an Order granting McDonald's Corporation a temporary protective order and set forth a sixty day period in which Plaintiffs were to continue engaging in discovery. Thereafter, Plaintiffs, if unable to answer the Motion for Summary Judgment were directed to file a motion to lift the protective order.

6. Plaintiffs conducted the deposition of Mr. Fred Beatty, the owner/operator of the McDonald's Restaurant, and of Ms. Debbie Jern, the manager of the McDonald's Restaurant.

7. While Plaintiffs believe they can defeat a Motion for Summary Judgment based upon specific disputed issues of material fact and the *Nanty-Glo* rule Plaintiff requests this Honorable Court lift the protective Order. See *Nanty-Glo v. American Surety Co.*, 309 Pa. 236, 163 A. 523 (1932); *Penn Center House, Inc. v. Hoffman*, 520 Pa. 171, 553 A.2d 900 (1989).

8. In support of both the Motion for Summary Judgment and the Motion for Protective Order, Defendant has provided an affidavit stating that

McDonald's Corporation does not own, control, or maintain the McDonald's Restaurant where the incident occurred.

9. Plaintiffs will suffer severe prejudice if forced to defend a Motion for Summary Judgment without McDonald's Corporation answering the Complaint, and without having received any discovery from the Defendant seeking summary judgment with the exception of the aforementioned affidavit. Plaintiffs recognize that McDonald's may generally deny Plaintiff's Complaint, however, pursuant to Pa.R.C.P. 1029(e)(1), Defendant must specifically deny averments relating to the identity of the person by whom a material act was committed, the agency or employment of such person and the ownership, possession or control of the property or instrumentality involved. Further, Plaintiffs have served Defendant McDonald's Corp. with interrogatories and to date have received no response. Plaintiff asserts that at the very least Plaintiff should be permitted to conduct a deposition of a corporate designee from McDonald's Inc. with knowledge specific to McDonald's Corporation's admitted monitoring, inspection, and control of its franchises.

10. Pa.R.C.P. 1035.2 states:

After the **relevant pleadings are closed**, but within such time as to not unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause or defense which could be established by **additional discovery** or expert report, or

(2) **if, after the completion of discovery relevant to the motion**, including the production of expert reports, an adverse party who will bear the burden

of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury. emphasis added.

11. Oral testimony alone, either through testimonial affidavits or depositions of the moving party or the moving party's witness, even if uncontradicted, is generally insufficient to establish the absence of a genuine issue of material fact. See *Nanty-Glo v. American Surety Co.*, 309 Pa. 236, 163 A. 523 (1932); *Penn Center House, Inc. v. Hoffman*, 520 Pa. 171, 553 A.2d 900 (1989).

12. Plaintiff asserts that a disputed genuine issue of material fact exists as to whether McDonald's owns, operates, controls, or maintains the Beatty Restaurant Enterprises McDonald's, or to the extent McDonald's Corporation exercises control over this particular restaurant and retains the right to inspection.

13. Section 12 of the franchise agreement between Beatty enterprises is replete with references to McDonald's ability to inspect the franchisee's premises in order to verify compliance with the McDonald's system. Section 12 of the franchise agreement states in pertinent part:

12. Compliance with entire system. Licensee acknowledges that every component of the McDonald's system is important to McDonald's and to the operation of the Restaurant as a McDonald's Restaurant, including a designated menu of food and beverage products; uniformity of food specifications, preparation methods, quality and appearance; and uniformity of facilities and service.

McDonalds shall have the right to inspect the Restaurant at all reasonable times to ensure that Licensee's operation thereof is in compliance with the standards and policies of the McDonald's System.

Licensee shall comply with the entire McDonald's System, including but not limited to, the following:

(a) Operate the Restaurant in a clean, wholesome manner in compliance with prescribed standards of quality, service, and cleanliness; comply with all business policies, practices and procedures **imposed** by McDonald's; serve at the Restaurant only those food and beverage products now or hereafter **designated** by McDonald's; and **maintain** the building, **equipment**, signage, seating and décor and parking area, in a good, clean, wholesome condition and repair, and well lighted and **in compliance** with **designated standards** as may be prescribed from time to time by McDonalds.

(b) **Purchase kitchen fixtures**, lighting and other equipment, seating, and signs in accordance with the equipment specifications and layout initially designated by McDonald's, and, promptly after notice from McDonald's that the premises are ready for occupancy cause the installation thereof.....
(emphasis supplied).

14. Clearly, in light of section 12 of the franchise agreement

McDonald's has set forth designated standards regarding the maintenance of its franchisee's equipment which would include the subject french fryer and fry rack. Further, it is also clear that McDonald's controls the purchase of the equipment including the french fryer and fry rack used by its franchises.

15. Moreover, Plaintiff elicited testimony from both Mr. Beatty the owner of the Beatty Restaurant Enterprises McDonald's and Debbie Jern, the manager of Beatty Enterprises, indicating that McDonald's has the right to come

onto Plaintiff's premises and does so, with and without notice, to inspect whether the franchise is operating in compliance with McDonald's standards or the McDonald's system.

16. Mr. Beatty and Ms. Jern both testified that McDonald's has conducted these inspections at the Beatty Enterprises McDonald's and does so several times a year.

17. Ms. Jern testified at deposition that McDonald's makes an assessment after these inspections. Ms. Jern further testified that the franchise must achieve a minimum assessment grade of 80%.

18. However, despite the admission that McDonald's retains the right to enter upon Beatty Restaurant Premises, neither Mr. Beatty nor Ms. Gern was able to testify as to the consequences of non-compliance with McDonald's standards or McDonald's system and what happens in the event the minimum grade of 80% is not met.

19. A corporate designee of McDonald's could testify as to what occurs when McDonald's finds a franchise to be out of compliance with the McDonald's system or below the assessment standard. This testimony would certainly aid Plaintiffs in defending a motion for summary judgment premised merely on an affidavit setting forth that McDonald's Corporation does not own operate or control the Beatty Enterprises McDonald's. A corporate designee would further be able to provide information as to what McDonald's inspects and what constitutes compliance with McDonald's standards or the McDonald's system.

20. Plaintiff also developed deposition testimony that the subject french fryer and french fry rack has to be ordered by an approved supplier of McDonald's and had to meet McDonald's specifications. Plaintiff believes this exhibits an element of control over the very instrumentality that injured Plaintiff and that Plaintiff should therefore be able to explore the degree of control by deposing a McDonald's Corporation designee.

WHEREFORE, Plaintiffs Peter Nakoski and Katherine Nakoski respectfully request that this Court enter an order lifting the temporary protective order prohibiting Plaintiff's counsel from taking the deposition of McDonald's Corporation's corporate designee in this matter.

RESPECTFULLY SUBMITTED:

BY: TS AN
Timothy Montgomery, Esq.
PA I.D. 94179

Dominion Tower
Suite 300, 625 Liberty Ave.
Pittsburgh, PA 15222


Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Timothy Montgomery, Esquire, hereby certify that true and correct copies of the foregoing Motion to Lift Protective Order have been served this 5th day of January, 2007 by U.S. first-class mail, postage prepaid, to all counsel of record.

Christopher T. Lee
Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222

Hal K. Waldman & Associates

BY 
Timothy Montgomery, Esq.
Attorney for Plaintiffs

UA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

vs.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT
ENTERPRISES, INC. t/d/b/a
MCDONALD'S,

Defendants.

CIVIL DIVISION

No.: 2004-1053-CD

ORDER

AND NOW, this 9th day of JAN, 2007, upon consideration of the foregoing motion, it is hereby ordered that:

- (1) a rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested;
- (2) the respondent shall file an answer to the petition within twenty (20) days of service upon respondent;
- (3) the motion shall be decided under Pa.R.C.P. No. 206.7;
- (4) depositions and all other discovery shall be completed within ___ days of this date;
- (5) an evidentiary hearing on disputed issues of material fact shall be held on January 12, in Courtroom 1 of the Clearfield County Courthouse; @ 1:30 p.m. 2007
- (6) notice of the entry of this order shall be provided to all parties by the petitioner.

BY THE COURT

Frederick J. Zimmerman

I notified
Pff by phone
3 advised them
to notify Def's.

FILED
01/12/07
JAN 09 2007

William A. Shaw
Prothonotary/Clerk of Courts

4cc
Atty Waldman
(mailed
1/9/07)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

CIVIL DIVISION

No. 2004 - 1053 - CD

Issue No.

**DEFENDANT'S SUPPLEMENT TO
MOTION FOR SUMMARY JUDGMENT**

Code:

Filed on behalf of Defendant, McDonald's
Corporation

Counsel of record for this party:

Christopher T. Lee, Esquire
PA I.D. # 62422

DICKIE, MCCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED
JAN 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

CIVIL DIVISION

No. 2004 - 1053 - CD

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

DEFENDANT'S SUPPLEMENT TO MOTION FOR SUMMARY JUDGMENT

AND NOW, comes the Defendant, McDonald's Corporation, by and through its counsel, Dickie, McCamey & Chilcote, P.C., and files the within Defendant's Supplement to Motion for Summary Judgment and in support thereof avers as follows:

1. On November 3, 2006, Defendant, McDonald's Corporation, filed a Motion for Summary Judgment ("Motion").

2. In that Motion, McDonald's Corporation requested that this Court dismiss Plaintiffs' claim against them with prejudice because the evidence shows that McDonald's Corporation does not own, operate or maintain the French fryer or fry rack alleged to be involved in this case. Thus, Plaintiff has failed to set forth any evidence that McDonald's Corporation should be a party in this matter.

3. Since the filing of that Motion, Plaintiff has taken the deposition of Fred Beatty, the owner of Beatty Restaurant Enterprises, Inc., t/d/b/a McDonald's ("Beatty Restaurant"). At that deposition, McDonald's Corporation developed and discovered further support for its Motion.

4. Specifically, Mr. Beatty testified that according to Paragraph 12(b) of the Franchise Agreement (See Exhibit A to the Motion) with McDonald's, Beatty Restaurant is responsible for purchasing the equipment used in the restaurant, including all kitchen equipment, the French fryer, and the fry rack. (Beatty 12/12/06 Dep. at 57-59, attached hereto as Exhibit C.)

5. Beatty Restaurant, in fact, purchased the French fryer and fry rack that was in use at the restaurant in May of 2003. (Beatty 12/12/06 Dep. at 58.)

6. Mr. Beatty testified that under the Paragraph 4.02 of the Operator's Lease, which is Exhibit A to the Franchise Agreement, Beatty Restaurant is required, at its expense, to maintain and repair all equipment in the restaurant, including the French fryer and fry rack. (Beatty 12/12/06 Dep. at 59-60.)

7. McDonald's has never repaired any equipment located in the restaurant, including the French fryer and fry rack, at any time. (Beatty 12/12/06 Dep. at 60-61.)

8. Although McDonald's owns the restaurant structure, all repairs and maintenance to the building and structure are done at the expense of Beatty Restaurant by a contractor of his choosing. (Beatty 12/12/06 Dep. at 61-63.)

9. As such, Beatty Restaurant admits that it owned, operated, purchased, and maintained all equipment, including the French fryer and fry rack, in use at the restaurant at the time of the incident.

10. Accordingly, McDonald's Corporation respectfully requests that this Honorable Court grant its previously filed Motion for Summary Judgment.

11. Moreover, Beatty Restaurant maintains a policy of insurance that has a limit of one million dollars per person for loss for the applicable time frame. (See Exhibit B attached to

Motion.) Plaintiffs' current settlement demand is \$39,000, and Beatty Restaurant's current offer is \$35,000.

WHEREFORE, this Defendant, McDonald's Corporation, respectfully requests that this Court enter summary judgment in its favor and dismiss Plaintiffs' claim against McDonald's Corporation with prejudice.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By Christopher T. Lee /AT
Christopher T. Lee, Esquire
Pa. I.D. #62422

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

*Attorneys for Defendant, McDonald's
Corporation*

CERTIFICATE OF SERVICE

I, Christopher T. Lee, Esquire, hereby certify that a true and correct copy of the foregoing Defendant's Supplement to Motion for Summary Judgment has been served this 8th day of January, 2007, by U.S. first-class mail, postage prepaid, to all counsel of record:

Hal K. Waldman, Esquire
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
Attorneys for Plaintiff

DICKIE, McCAMEY & CHILCOTE, P.C.

By Christopher T. Lee /ATT
Christopher T. Lee, Esquire

*Attorneys for Defendant, McDonald's
Corporation*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

CIVIL DIVISION

No. 2004 - 1053 - CD

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2007, it is hereby
ORDERED, ADJUDGED and DECREED that Defendant, McDonald's Corporation's
Supplement to Motion for Summary Judgment is hereby GRANTED and McDonald's
Corporation is dismissed from this case with prejudice and it shall be stricken from the caption.

c

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA
CIVIL DIVISION

* * * * *

PETER NAKOSKI and *
KATHERINE NAKOSKI, *
his wife, *

Plaintiffs * Case No.
vs. * 2004-1053-CD

MCDONALD'S *
CORPORATION and *
BEATTY RESTAURANT *
ENTERPRISES, INC., *
t/d/b/a MCDONALD'S, *
Defendants *

* * * * *

DEPOSITION OF
FREDERICK EDWARD BEATTY
DECEMBER 12, 2006

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is prohibited without authorization
by the certifying agency.

1 Q. Do you pay McDonald's any other
2 fees on a monthly basis?

3 A. Rent.

4 Q. Anything else?

5 A. No.

6 Q. Now, I'd like to direct your
7 attention to different aspects of this
8 agreement. I'd like to direct your
9 attention to paragraph 12, which is on
10 page five. Do you have that in front
11 of you?

12 A. Yes.

13 Q. I'd ask you to review paragraph
14 12, the top, and then paragraph B. And
15 when you're finished reviewing that,
16 let me know.

17 WITNESS REVIEWS DOCUMENT

18 A. Okay.

19 BY ATTORNEY LEE:

20 Q. All right. Now, as I understand
21 paragraph 12(b), under the franchise
22 agreement you're responsible for
23 purchasing the equipment that is used
24 in the restaurant; is that correct?

25 A. Yes.

1 Q. And that would include kitchen
2 equipment; correct?

3 A. Yes.

4 Q. Would that include a french
5 fryer?

6 A. Yes.

7 Q. Does that include the fry rack?

8 A. Yes.

9 Q. And did you, in fact, purchase
10 the fryer and fry rack that was in this
11 DuBois McDonald's restaurant on May
12 5th, 2003?

13 A. Did I purchase it?

14 Q. Yes, your company.

15 A. Yes.

16 Q. Okay. I'd like to direct your
17 attention to the operator's lease,
18 which is Exhibit A to the franchise
19 agreement, and specifically paragraph
20 2.06 of that lease. Do you have it in
21 front of you?

22 A. Yes.

23 Q. Can you review it for me? And
24 when you've completed your review, let
25 me know.

1 WITNESS REVIEWS DOCUMENT

2 A. Okay. I'm finished.

3 BY ATTORNEY LEE:

4 Q. Now, as I understand that
5 paragraph, and correct me if I'm wrong,
6 but that paragraph obligates you to
7 purchase the trade fixtures, equipment
8 and other personal property that is
9 located on the premises for your use;
10 is that correct?

11 A. Yes.

12 Q. And that applies to this
13 particular restaurant, the DuBois
14 McDonald's restaurant; is that correct?

15 A. Yes.

16 Q. And that paragraph would apply
17 to the french fryer and fry rack that
18 was located at that restaurant on May
19 5th, 2003; correct?

20 A. Yes.

21 Q. I'd like to direct your
22 attention to paragraph 4.02 on page
23 seven. And I'd ask that you review the
24 paragraph.

25 WITNESS REVIEWS PARAGRAPH

1 A. Okay.

2 BY ATTORNEY LEE:

3 Q. All right. Now, that paragraph,
4 4.02, is entitled maintenance and
5 repair; is that correct?

6 A. Yes.

7 Q. And I'm going to read a portion
8 of the paragraph and I'm going to ask
9 you if I read it correctly. It says,
10 tenant will, at its expense,
11 subparagraph (a), keep the entire
12 premises, all improvements, utility
13 lines and tenants or landlords,
14 fixtures and equipment at all times in
15 good repair, order or condition.
16 Subparagraph (b), replace all broken,
17 damaged or missing personal property,
18 fixtures or equipment. Did I read that
19 correctly?

20 A. Yes.

21 Q. Does that paragraph apply to the
22 french fryer and fry rack as it existed
23 on May 5th, 2003, at your restaurant?

24 A. Yes.

25 Q. Let's talk generally about the

1 equipment located at the restaurant.
2 In the time that you've owned this
3 DuBois McDonald's restaurant, has
4 McDonald's Corporation at any time ever
5 performed any repairs at this
6 restaurant?

7 A. No.

8 Q. Has McDonald's Corporation ever
9 directed you to specifically repair the
10 french fryer and fry rack at any time
11 while you owned the DuBois McDonald's?

12 A. No.

13 Q. If there was a problem ---
14 strike that.

15 Let's take a step back. You
16 previously testified that the building
17 itself is owned by McDonald's
18 Corporation; correct?

19 A. Yes.

20 Q. And that the fixtures, seating,
21 signage, kitchen equipment and
22 everything inside the McDonald's is
23 owned by you; is that correct?

24 A. Yes.

25 Q. If there was a problem with the

1 roof in May 2003, say it was leaking,
2 say it was damaged in some way, who
3 would perform the repairs to the roof?

4 A. At my expense, a contractor that
5 I would select.

6 Q. Would McDonald's perform the
7 repairs to the roof?

8 A. No.

9 Q. Would McDonald's pay for the
10 repairs to the roof?

11 A. No.

12 Q. The same question with regard to
13 seating damage in the restaurant.
14 Would McDonald's perform repairs to
15 seating that was defective in the
16 restaurant?

17 A. No.

18 Q. How about if there was a problem
19 in the bathrooms, would McDonald's make
20 repairs to any portions of the
21 bathrooms?

22 A. No.

23 Q. If there's any defect at all
24 whatsoever on your property in May 2003
25 at the DuBois McDonald's, would

1 McDonald's Corporation make the repairs
2 and pay for the repairs?

3 A. No.

4 Q. And why is that? Is that
5 because that's the terms of the
6 agreement?

7 A. That's the agreement. That's
8 the agreement between myself and
9 McDonald's.

10 Q. Now, during the entire time that
11 you've owned this DuBois McDonald's at
12 the Wal-Mart Plaza, was the business
13 that was operated out of that
14 restaurant, was it ever owned by
15 McDonald's Corporation?

16 A. No.

17 Q. Did McDonald's Corporation ever
18 hire or fire any one of the employees
19 that worked at this particular
20 McDonald's?

21 A. No.

22 Q. Does McDonald's Corporation have
23 the right to hire employees to work at
24 your restaurant at DuBois McDonald's?

25 A. Not that I know of.

1 Q. Have they ever hired employees
2 for you at the DuBois McDonald's?

3 A. No.

4 Q. Who pays and paid for the
5 utilities at this restaurant in May
6 2003?

7 A. I did.

8 Q. Did McDonald's Corporation ever
9 sell a product, specific product, at
10 this restaurant at any time while
11 you've owned it?

12 A. McDonald's sell a product?

13 Q. Yes.

14 A. No.

15 Q. When someone buys a hamburger at
16 the DuBois McDonald's and they pay for
17 it, who receives that money, McDonald's
18 Corporation or Beatty Enterprises?

19 A. Beatty Enterprises.

20 Q. And that was true in May 2003;
21 is that correct?

22 A. Yes.

23 ATTORNEY LEE:

24 Those are all the
25 questions I have. Thank you.

FILED

JAN 10 2007

**William A. Shaw
Prothonotary/Clerk of Courts**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

vs.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT
ENTERPRISES, INC. t/d/b/a
MCDONALD'S,

Defendants.

CIVIL DIVISION

No.: 2004-1053-CD

**RESPONSE TO MOTION FOR
SUMMARY JUDGMENT**

Filed on Behalf of Plaintiffs

Counsel of Record for this Party

TIMOTHY MONTGOMERY,
ESQUIRE
PA I.D. #: 94179

Hal K. Waldman & Associates
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.: 2004-1053-CD
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

RESPONSE TO MOTION FOR SUMMARY JUDGMENT

AND NOW, come the Plaintiffs Peter Nakoski and Katherine Nakoski, husband and wife, by and through their counsel, Hal K. Waldman & Associates, and files this response to Defendant's Motion for Summary Judgment and in support thereof state as follows.

1. Defendant McDonald's Corporation's Motion for Summary

Judgment filed on November 3, 2006, is premature as it was filed before the relevant pleadings were closed. Defendant McDonald's Corporation had not answered Plaintiff's Complaint at the time Defendant moved this honorable Court for Summary Judgment. In lieu of sending a ten notice notifying Defense Counsel of this error, Plaintiff contacted Defendant via telephone alerting Defendant to this error. Defendant subsequently filed an Answer and New Matter to Plaintiff's Complaint which was received by Plaintiff on January 8, 2007 over two months after the filing of the Motion for Summary Judgment.

Pa.R.C.P. 1035.2 states:

After the **relevant pleadings are closed**, but within such time as to not unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

2. Plaintiff asserts that pursuant to Pa.R.C.P. 1035.2 Defendant's

Motion for Summary Judgment should be denied on the following bases:

a. Defendant filed it's Motion for Summary Judgment before the relevant pleadings were closed.

b. The relevant pleadings remain open as Plaintiff has not been afforded an opportunity to respond to Defendant's Answer and New Matter pursuant to Pa R.C.P. 1026 (a), which states, every pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading...

3. Plaintiff further requests that the Motion for Summary Judgment be denied pursuant to Pa.R.C.P. 1035.2 (1) which states:

After the **relevant pleadings are closed**, but within such time as to not unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause or defense which could be established by **additional discovery** or expert report, or

Plaintiff believes a genuine issue of material fact that McDonald's does control Beatty Restaurant Enterprises can be established through additional discovery. Plaintiff asserts this argument is especially compelling in light of the fact that Plaintiff's have received no discovery relative to McDonald's Corporation's

defense of this case with the exception of an affidavit. Plaintiff has served interrogatories on Defendant McDonald's counsel of record which have not been answered. Further, Plaintiff has attempted to depose a corporate designee of McDonald's, and pursuant to this Court's Temporary Protective Order has been denied this opportunity.

4. Plaintiff further requests that the Motion for Summary Judgment be denied based upon Pa.R.C.P. 1035.2 (2) which states in pertinent part:

After the **relevant pleadings are closed**, but within such time as to not unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(2) if, after the **completion** of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

5. Plaintiff contends that discovery as to McDonald's Corporation has not been completed as required under the rules of civil procedure. Plaintiff has served written interrogatories on McDonald's Counsel of record and received no response. Plaintiff has also requested to take a deposition of a corporate designee which has been denied. In fact, Plaintiff has received only an affidavit from McDonald's Corporation concerning McDonald's defense of this case. Therefore the discovery necessary and relevant to defend a Motion for Summary Judgment has not been completed and said Motion is premature.

6. Defendant's have premised their Motion for Summary Judgment entirely on an affidavit submitted by managing counsel stating that McDonald's does not own, operate, maintain, or control the Beatty Restaurant Enterprises McDonald's; Beatty Restaurant Enterprises answers to interrogatories that Beatty Restaurant Enterprises McDonald's owns, operates, maintains, and controls the Beatty Restaurant Enterprises McDonald's; and the Franchise agreement.

7. Plaintiff asserts that a genuine issue of material fact exists as to whether McDonald's Corporation controls the Beatty Enterprise McDonald's.

8. Said Franchise Agreement in paragraph 1 (c) on page 1, which is attached to this motion as exhibit A sets forth the following:

(c) The foundation of the McDonald's System and the essence of this Franchise is the **adherence** by Licensee to standards and policies of McDonald's providing for the uniform operation of all McDonald's Restaurants within the McDonald's System including but not limited to, serving only **designated** food and beverage products; the use of only **prescribed equipment** and building layout and designs; **strict adherence** to designated food and beverage specifications and to McDonald's prescribed standards of Quality, Service, and Cleanliness in Licensee's restaurant operation. Compliance by Licensee with the foregoing standards and policies in conjunction with the McDonald's trademarks and service marks provides the basis for the valuable good will and wide family acceptance of the McDonald's system. Moreover, the restaurant business, his accountability for performance of the obligations contained in this Franchise, and his adherence to the tenets of the McDonald's system constitute the essence of the franchise.

Further, paragraph 12 of the franchise agreement states in pertinent part:

12. Compliance with Entire System. Licensee acknowledges that every component of the McDonald's system is important to McDonald's and to the operation of the Restaurant as a McDonald's restaurant, including a designated menu of food and beverage products; uniformity of food specifications, preparation methods, quality and appearance; and uniformity of facilities and service.

McDonald's shall have the right to inspect the Restaurant at all reasonable times to ensure that Licensee's operation thereof is in compliance with the standards and policies of the McDonald's system.

Licensee shall comply with the entire McDonald's System, including but not limited to, the following:

(a) Operate the Restaurant in a clean, wholesome manner in compliance with prescribed standards of quality, service, and cleanliness; comply with all business policies, practices and procedures imposed by McDonald's; serve at the Restaurant only those food and beverage products now or hereafter **designated** by McDonald's; and **maintain** the building, **equipment**, signage, seating and décor and parking area, in a good, clean, wholesome condition and repair, and well lighted and in **compliance with designated standards** as may be prescribed from time to time by McDonalds.

(b) **Purchase kitchen fixtures**, lighting and other equipment, seating, and signs in accordance with the equipment specifications and layout initially designated by McDonald's, and, promptly after notice from McDonald's that the premises are ready for occupancy cause the installation thereof.....
(emphasis supplied).

Paragraph 18 of the Franchise agreement sets forth what occurs if there is a material breach of the agreement.

Material Breach. The parties agree that the happening of any of the following events shall constitute a material breach of this franchise and

violate the essence of Licensee's obligations, and, without prejudice to any of its other rights or remedies at law or in equity, McDonald's at its election, may **terminate** this franchise upon the happening of any of the following events:

(a) Licensee shall **fail to maintain and operate** the restaurant in a good, clean, wholesome manner and **in compliance with the standards prescribed by the McDonald's System.....**

(l) Licensee shall deny McDonald's the right to **inspect** the Restaurant at all reasonable times....

9. Based upon the foregoing, Beatty Restaurant Enterprises can only serve designated food products, prepared by equipment that has to be approved, operated and maintained by McDonald's standards with McDonald's reserving the right to inspect to ensure compliance with McDonald's standards at any reasonable time. In the event that an inspection would show Beatty Enterprises has failed to meet McDonald's standards or is out of compliance with the McDonald's system McDonald's shall have the right to terminate the franchise.

10. Plaintiff contends that McDonald's Corporation exhibits a considerable amount of control over Beatty Restaurant Enterprises based upon the terms of the franchise agreement.

11. Plaintiff was further able to develop testimony from Mr. Fred Beatty, the owner/operator of the Beatty Enterprises McDonald's and Ms. Debbie Jern the general manager of the Beatty Enterprises McDonald's raising a genuine disputed issue of material fact as to McDonald's control over the Beatty Restaurant Enterprises McDonald's.

12. Plaintiff elicited testimony from both Mr. Beatty the owner of the Beatty Restaurant Enterprises McDonald's and Debbie Jern, the manager of Beatty Enterprises, indicating that McDonald's has the right to come onto Plaintiff's premises and does so, with and without notice, to inspect whether the franchise is operating in compliance with McDonald's standards or the McDonald's system. See Beatty Depo pp. 29-33, 67-68 and Jern Depo pp. 33-37, 40-41.

13. Mr. Beatty and Ms. Jern both testified that McDonald's has conducted these inspections at the Beatty Enterprises McDonald's and does so several times a year. See Beatty Depo pp. 29-33, 67-68 and Jern Depo pp. 33-37, 40-41.

14. Ms. Jern testified at deposition that McDonald's makes an assessment after these inspections. Ms. Jern further testified that the franchise must achieve a minimum assessment grade of 80%. See Jern Depo pp. 33-37, 40-41.

15. However, despite the admission that McDonald's retains the right to enter upon Beatty Restaurant Premises, neither Mr. Beatty nor Ms. Gern was able to testify as to the consequences of non-compliance with McDonald's standards or McDonald's system and what happens in the event the minimum grade of 80% is not met. See Jern Depo pp. 33-37, 40-41.

16. In support of its Motion for Summary Judgment, McDonald's has relied on Beatty Enterprises' answers to Interrogatories, Beatty Enterprises'

production of the Franchise agreement and an affidavit set forth by McDonald's Corporation.

17. Oral testimony alone, either through testimonial affidavits or depositions of the moving party or the moving party's witness, even if uncontradicted, is generally insufficient to establish the absence of a genuine issue of material fact. See *Nanty-Glo v. American Surety Co.*, 309 Pa. 236, 163 A. 523 (1932); *Penn Center House, Inc. v. Hoffman*, 520 Pa. 171, 553 A.2d 900 (1989).

18. Plaintiff contends that the only evidence to support McDonald's Motion for Summary Judgment set forth by McDonald's is an affidavit and based upon the rule enunciated in *Nanty Glo* this affidavit is insufficient to establish the absence of a genuine issue of material fact particularly with respect to McDonald's Corporation's control of the Beatty Enterprises franchise.

19. Plaintiff premises this assertion on the fact that the affidavit is not supported by the additional evidence set forth by McDonald's. Specifically, the affidavit stating McDonald's does not control the Beatty Restaurant Enterprises McDonald's is directly contradicted by the franchise agreement on its face. Further Mr. Beatty's testimony as a whole also contradicts the affidavit.

20. Plaintiff requests that this honorable Court deny Summary Judgment on the basis that the documents set forth by Defendant's themselves create a dispute as to an genuine issue of material fact.

WHEREFORE, Plaintiffs Peter Nakoski and Katherine Nakoski respectfully request that this Court enter an order denying Defendant McDonald's Corporation's Motion for Summary Judgment.

RESPECTFULLY SUBMITTED:

BY: Timothy Montgomery

Timothy Montgomery, Esq.
PA I.D. 94179

Dominion Tower
Suite 300, 625 Liberty Ave.
Pittsburgh, PA 15222
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Timothy Montgomery, Esquire, hereby certify that true and correct copies of the foregoing Motion to Lift Protective Order have been served this 10th day of January, 2007 by U.S. first-class mail, postage prepaid, to all counsel of record.

Christopher T. Lee
Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222

Hal K. Waldman & Associates

BY


Timothy Montgomery, Esq.
Attorney for Plaintiffs



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

PLAINTIFF,

v.

NO.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT
ENTERPRISES, INC. t/d/b/a
MCDONALD'S,

DEFENDANT.

AFFIDAVIT

Personally appeared before the undersigned officer duly authorized by law to administer oaths, Geneace Williams, who, after being sworn, deposes and states that the statements set forth below are true and correct and based upon her personal knowledge gained through file reviews and investigation of McDonald's employees. The statements contained in this Affidavit are true as of this date and were true on May 5, 2003.

1. My name is Geneace Williams. I am employed by McDonald's Corporation as Managing Counsel, and I am authorized to give this affidavit on behalf of McDonald's Corporation.

2. The plaintiff(s) brought a lawsuit against McDonald's Corporation alleging damages for an injury sustained at the McDonald's restaurant located at SR 255 Walmart Plaza, Du Bois, PA 15801, on May 5, 2003.

3. McDonald's Corporation did not own the business specified above.

4. McDonald's Corporation did not operate the business specified above.

5. McDonald's Corporation did not, nor did it have the right to, hire, discharge or discipline employees of the business specified above.

6. McDonald's Corporation did not pay the utilities for the business specified above.

7. McDonald's Corporation did not sell any product at or to the business specified above.

8. McDonald's Corporation did not file a tax return for or on behalf of the business specified above.

9. McDonald's Corporation did not manufacture, process or prepare any product for sale at the business specified above.

10. McDonald's Corporation did not supply any product, nor did it own or operate any business which supplies product to the business specified above.

11. McDonald's Corporation did not, nor did it have the right to, control the day-to-day activities necessary to carrying on the business operations of the restaurant specified above.

12. At the time of the alleged incident, the restaurant business specified above was owned and operated by Beatty Restaurant Enterprises, Inc. pursuant to the terms of a franchise agreement dated April 29, 1993.

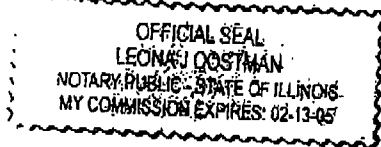
This the 1 day of October, 2004.

Geneace Williams
Geneace Williams

Sworn to and subscribed before me, this the
1 day of October, 2004

Leona J. Postman
Notary Public

My Commission Expires:



ASSIGNMENT AND CONSENT TO ASSIGNMENT
OF FRANCHISE TO A CORPORATION

Parties: McDonald's Corporation ("McDonald's"), dba
Delaware McDonald's Corporation

Fredric E. Beatty

Carolyn S. Beatty (Collectively
referred to as "Assignor");

Beatty Restaurant Enterprises, Inc. ("Assignee")
a NEW YORK Corporation;

and those shareholders listed on Exhibit A attached hereto and hereby
made a part hereof (collectively referred to as "Shareholders")

Date: MAY 20 1993

WHEREAS, McDonald's or its predecessors granted a franchise to
Assignor, including a License Agreement or Franchise Agreement dated
April 29, 1993, ("License") and an Operator's Lease dated
April 29, 1993, ("Lease"), for the purpose of operating a McDonald's
restaurant located at State Route 255, DUBOIS, PENNSYLVANIA
("Restaurant");

WHEREAS, Assignor desires to transfer the rights in the franchise,
including the License and Lease, ("Franchise") to the Assignee; and

WHEREAS, the parties acknowledge this consent is necessary to insure
the ability of McDonald's to have the type of operators who will operate the
Restaurant business consistent with McDonald's image in the specific community
and in the nation as a whole of having a wholesome atmosphere attractive to children
and families.

NOW, THEREFORE, to induce McDonald's to execute this Assignment
and Consent to Assignment of Franchise to a Corporation (Assignment), and in
consideration of the premises, promises, covenants, warranties and representations
herein contained, the parties agree as follows:

1. Assignor, in consideration of \$10.00 and other good and valuable
consideration, hereby assigns, transfers and sets over to Assignee all the right, title
and interest of Assignor in and to the Franchise, subject to the terms and conditions
of the Franchise.

2. The effective date of the Assignment shall be upon the opening
date of the restaurant.

3. Assignee hereby covenants and agrees to pay all fees and will
perform all the terms and conditions of the Franchise.

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4. Assignor is in no way discharged from personal liability to McDonald's by this Assignment and Assignor specifically agrees to remain personally liable for the full and faithful performance of the agreements and covenants of the Franchise.

5. Assignor, Assignee and Shareholders, jointly and severally, agree, represent and warrant that they shall not make or permit any direct or indirect subsequent assignment or hypothecation of the Franchise, whether voluntarily or by operation of law, without the prior written consent of McDonald's given in accordance with the Franchise and this Assignment.

6. In addition to the above covenants, Assignor and Assignee agree that if any trusts are shareholders of shares of stock of Assignee that:

(a) The beneficial interests in said trusts shall not be assigned without the prior written consent of McDonald's and shall be in accordance with the terms of this Assignment and the License.

(b) Assignor and Assignee warrant that the Trust Agreement supplied to McDonald's is a true and correct copy of the Trust Agreement as it is presently in force. Assignor and Assignee agree not to make any amendments to the Trust Agreement without first giving McDonald's an opportunity to review and approve same.

7. Since the transfer of an interest in the Assignee will in substance constitute an assignment of the Franchise, which Assignor and Assignee have agreed not to transfer except in accordance with certain restrictions, Assignor, Assignee and each Shareholder, jointly and severally, further represent and warrant that: (i) they are the only persons and/or entities with equity interests in Assignee; (ii) the extent of such equity interests are as set forth on Exhibit A attached hereto; (iii) there are no obligations or intentions to issue additional equity interests in Assignee; and (iv) the only persons having a beneficial interest in any trust shareholder are as listed in Exhibit A attached hereto. Assignee and each Shareholder, jointly and severally, agree they shall not make or permit, directly or indirectly, the creation of new or additional equity interests in Assignee or make or permit any subsequent assignment or transfer thereof, or of any issued and outstanding equity interests either voluntarily or by operation of law, including, but not limited to: (a) transfers to successor trustees whether or not such transfer may already be provided for in any Trust Agreement under which any trustee shareholder derives its authority; and (b) any hypothecation or other encumbrance of such equity interest without the written consent of McDonald's first had and obtained in accordance with the provisions of the Franchise and this Assignment. Permanent incapacity of any Shareholder shall be deemed to be a transfer by operation of law for purposes of this Assignment. As used herein the term "equity interest(s)" shall include direct or indirect interests in the equity of the Assignee or the business risk of the Restaurant, including, but not limited to, interests allegedly denominated as debt but which in substance encompass the type of risk-taking interest described herein or any interest in the profits of the Restaurant.

8. McDonald's hereby consents to the assignment of the Franchise to Assignee as required by the Franchise upon the following conditions only:

(a) McDonald's has been induced to execute this Assignment by the agreements, representations and warranties executed and undertaken by Assignor, Assignee and Shareholders as set forth herein.

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(b) The granting of this consent is in no way either an approval by McDonald's of the corporate charter or any other documents pertaining to Assignee and insofar as the terms of same may conflict with or contradict the terms of this Assignment said terms are expressly disclaimed.

(c) Assignor and/or Assignee shall legend all issued and outstanding shares of stock of Assignee and future issues of shares of stock of Assignee with the following legend:

This stock may not be pledged, sold, assigned or otherwise transferred, in whole or in part, voluntarily or by operation of law, without the prior written consent of McDonald's Corporation. Any and all transfers are also subject to the terms of the Franchise, including the License Agreement or Franchise Agreement and Operator's Lease, or other applicable agreements, for each McDonald's restaurant operated by Beatty Restaurant Enterprises, Inc.

(d) The granting of this consent to a trust shareholder is not a consent to any proposed future transfers of shares of stock of Assignee to beneficiaries upon the attainment of a certain age or other condition. Any and all future transfers or vesting of shares of stock of Assignee are subject to the terms of paragraph 8 below.

(e) The granting of this consent is in no way an approval of any terms of the Trust Agreement and insofar as said terms may conflict with or contradict the terms of this Assignment, they are expressly disclaimed.

9. The parties agree that in determining whether to grant or to withhold consent to the transfer (whether voluntary or by operation of law) of an interest in Assignee or the Franchise, at any future date, McDonald's shall consider of each prospective transferee, by way of illustration and not limitation, the following: (i) work experience and aptitude; (ii) financial background; (iii) character; (iv) ability to personally devote full time and best efforts to managing the Restaurant; (v) residence in the locality of the Restaurant; (vi) equity interest in the Restaurant; (vii) conflicting interests; (viii) whether or not, in McDonald's sole determination, the transferee intends to be active in the operations of the Restaurant; and (ix) such other criteria and conditions as McDonald's shall then apply in the case of an application for a new franchise to operate a McDonald's restaurant. Upon request to transfer the Franchise or an interest in Assignee, McDonald's consent to such transfer shall also be conditioned each upon such transferee's execution of an agreement by which he personally assumes full and unconditional liability for and agrees to perform from the date of such transfer all obligations, covenants and agreements contained in this Assignment to the same extent as if he had been an original party to this Assignment.

10. Granting consent to this Assignment does not constitute approval of any Shareholder as an approved owner/operator. However, Assignee and each Shareholder hereby covenant and agree to abide by and honor, as if Assignee and each Shareholder were a signatory thereto, those provisions of the License pertaining to the maintenance and protection of the McDonald's System, including, but not limited to, those provisions imposing duties of confidentiality and regulating involvement in other or similar restaurant businesses according to the terms of the License. Assignee and each Shareholder agree that a breach of this covenant shall constitute a breach of the License and entitle McDonald's to enforce all remedies available to it, including, but not limited to, the termination of the License.

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11. The parties' respective successors, assigns, heirs and personal representatives shall be bound by and receive the benefits of this Assignment. All obligations, agreements, representations and warranties made by more than one party herein shall be joint and several whether or not so stipulated in the relevant paragraph herein.

12. Assignor, Assignee and Shareholders agree that McDonald's at any time during normal business hours may examine, review and copy any and all of each of their records, books, financial records, tax returns or other documents for the purpose of insuring compliance with the Franchise and this Assignment.

13. Assignor, Assignee and each Shareholder agree that upon breach of the conditions, representations, agreements or warranties contained herein, they and each of them shall be subject, among all other remedies available by law or hereunder, to all relief and remedies granted to McDonald's by the Franchise.

14. Assignor represents and warrants that Assignor has notified any and all of Assignor's lienholders/lenders of this Assignment.

15. All terms and conditions of the Franchise remain in full force and effect, including, but not limited to, the requirement imposed on Fredric E. Beatty to personally devote full time and best efforts to the operation of the Restaurant business.

IN WITNESS WHEREOF, the parties set their hands and seals effective the date set forth above.

MCDONALD'S CORPORATION, DBA
DELAWARE MCDONALD'S CORPORATION

By: Eugene Stackowiak
Eugene Stackowiak
Assistant Vice President - Franchising

ASSIGNOR:

Fredric E. Beatty
Fredric E. Beatty

Carolyn S. Beatty
Carolyn S. Beatty

ASSIGNEE: Beatty Restaurant
Enterprises, Inc.

By: Fredric E. Beatty
President

SHAREHOLDERS:

Fredric E. Beatty
Fredric E. Beatty
Carolyn S. Beatty
Carolyn S. Beatty

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EXHIBIT ALISTING OF SHAREHOLDERS OF ASSIGNEE

<u>NAME</u>	<u>(IF TRUST BENEFICIARIES) RELATION TO ASSIGNOR</u>	<u>PERCENTAGE OWNERSHIP</u>
Fredric E. Beatty <i>FE</i>		
Carolyn S. Beatty <i>CS</i>		100% Joint

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Franchise") made this 29th day of April, 1993, for the operation of a McDonald's restaurant located at State Route 255, DUBOIS, PENNSYLVANIA (the "Restaurant") by and between:

**MCDONALD'S CORPORATION, DBA
DELAWARE MCDONALD'S CORPORATION**
a Delaware corporation,

("McDonald's")

and

Fredric E. Beatty

Carolyn S. Beatty

("Licensee")

for the purpose of granting the Licensee the rights necessary to operate the Restaurant.

In consideration of the mutual rights and obligations contained herein McDonald's and Licensee agree as follows:

1. *Nature and Scope of Franchise.*

(a) McDonald's has developed and operates a restaurant system ("McDonald's System"). The McDonald's System is a comprehensive system for the ongoing development, operation and maintenance of McDonald's restaurant locations which have been selected and developed by McDonald's for the retailing of a limited menu of uniform and quality food products, emphasizing prompt and courteous service in a clean, wholesome atmosphere which is intended to be attractive to children and families and includes proprietary rights in certain valuable trade names, service marks and trademarks, including the trade names "McDonald's" and "McDonald's Hamburgers," designs and color schemes for restaurant buildings, signs, equipment layouts, formulas and specifications for certain food products, methods of inventory and operation control, bookkeeping and accounting, and manuals covering business practices and policies. The McDonald's System is operated and is advertised widely within the United States of America and in certain foreign countries.

(b) McDonald's holds the right to authorize the adoption and use of the McDonald's System at the Restaurant. The rights granted to the Licensee to operate the Restaurant are set forth in this Franchise, including the Operator's Lease ("Lease") which is attached hereto as Exhibit A, incorporated herein and hereby made a part hereof.

(c) The foundation of the McDonald's System and the essence of this Franchise is the adherence by Licensee to standards and policies of McDonald's providing for the uniform operation of all McDonald's restaurants within the McDonald's System including, but not limited to, serving only designated food and beverage products; the use of only prescribed equipment and building layout and designs; strict adherence to designated food and beverage specifications and to McDonald's prescribed standards of Quality, Service and Cleanliness in Licensee's restaurant operation. Compliance by Licensee with the foregoing standards and policies in conjunction with the McDonald's trademarks and service marks provides the basis for the valuable good will and wide family acceptance of the McDonald's System. Moreover, the establishment and maintenance of a close personal working relationship with McDonald's in the conduct of his McDonald's restaurant business, his accountability for performance of the obligations contained in this Franchise, and his adherence to the tenets of the McDonald's System constitute the essence of this Franchise.

(d) The provisions of this Franchise shall be interpreted to give effect to the intent of the parties stated in this paragraph 1 so that the Restaurant shall be operated in conformity to the McDonald's System through strict adherence to McDonald's standards and policies as they exist now and as they may be from time to time modified.

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(e) Licensee acknowledges his understanding of McDonald's basic business policy that McDonald's will grant licenses only to those individuals who live in the locality of their McDonald's restaurant, actually own the entire equity interest in the business of the Restaurant and its profits, and who will work full-time at their McDonald's restaurant business. Licensee represents, warrants, and agrees that he actually owns the complete equity interest in this Franchise and the profits from the operation of the Restaurant, and that he shall maintain such interest during the term of this Franchise except only as otherwise permitted pursuant to the terms and conditions of this Franchise. Licensee agrees to furnish McDonald's with such evidence as McDonald's may request, from time to time, for the purpose of assuring McDonald's that Licensee's interest remains as represented herein.

(f) Licensee agrees to pay to McDonald's all required payments under this Franchise, including, without limitation, the payments set forth in paragraphs 8 and 9 herein and paragraph 3.01 of the Lease. In addition, Licensee shall make a non-interest bearing security deposit in the amount set forth in paragraphs 1.03 and 3.07 of the Lease. All payments hereby required constitute a single financial arrangement between Licensee and McDonald's which, taken as a whole and without regard to any designation or descriptions, reflect the value of the authorization being made available to the Licensee by McDonald's in this Franchise and the services rendered by McDonald's during the term hereof.

2. License Grant and Term.

(a) McDonald's grants to Licensee for the following stated term the right, license, and privilege:

- (i) to adopt and use the McDonald's System at the Restaurant;
- (ii) to advertise to the public that he is a licensee of McDonald's;
- (iii) to adopt and use, but only in connection with the sale of those food and beverage products which have been designated by McDonald's at the Restaurant, the trade names, trademarks and service marks which McDonald's shall designate, from time to time, to be part of the McDonald's System; and
- (iv) to occupy the Restaurant as provided herein.

The rights granted under this Franchise are limited to the Restaurant's location only.

(b) The term of the Franchise shall begin on the opening date of the Restaurant and end twenty (20) years thereafter, but in no event later than April 28, 2014, unless terminated prior thereto pursuant to the provisions hereof.

3. *General Services of McDonald's.* McDonald's shall advise and consult with Licensee periodically in connection with the operation of the Restaurant and also, upon Licensee's request, at other reasonable times. McDonald's shall communicate to Licensee its know-how, new developments, techniques and improvements in areas of restaurant management, food preparation, and service which are pertinent to the operation of a restaurant using the McDonald's System. The communications shall be accomplished by visits by Field Consultants, printed and filmed reports, seminars, and newsletter mailings. McDonald's shall also make available to Licensee all additional services, facilities, rights and privileges relating to the operation of the Restaurant which McDonald's makes generally available, from time to time, to all its licensees operating McDonald's restaurants.

4. *Manuals.* McDonald's shall provide Licensee with the business manuals prepared by McDonald's for use by licensees of McDonald's restaurants similar to the Restaurant to be operated by Licensee. The business manuals contain detailed information including: (a) required operations procedures; (b) methods of inventory control; (c) bookkeeping and accounting procedures; (d) business practices and policies; and (e) other management, advertising, and personnel policies. Licensee agrees to promptly adopt and use exclusively the formulas, methods and policies contained in the business manuals, now and as they may be modified by McDonald's from time to time. Licensee acknowledges that McDonald's is the owner of all proprietary rights in and to the McDonald's System and that the information revealed in the business manuals, in their entirety, constitute confidential trade secrets. Without the prior written consent of McDonald's, Licensee shall not disclose the contents of the business manuals to any person, except employees of Licensee for purposes related solely to the operation of the Restaurant, nor shall Licensee reprint or reproduce the manuals in whole or in part for any purpose except in connection with instruction of employees in the operation of Licensee's Restaurant. Such manuals, as modified by McDonald's from time to time, and the policies contained therein, are incorporated in this Franchise by reference.

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5. *Advertising.* McDonald's employs both public relations and advertising specialists who formulate and carry out national and local advertising programs for the McDonald's System.

Licensee shall use only advertising and promotional materials and programs provided by McDonald's or approved in advance, in writing, by McDonald's. Neither the approval by McDonald's of Licensee's advertising and promotional material nor the providing of such material by McDonald's to Licensee shall, directly or indirectly, require McDonald's to pay for such advertising or promotion.

Licensee shall expend during each calendar year for advertising and promotion of the Restaurant to the general public an amount which is not less than four percent (4%) of his Gross Sales (as that term is defined in Paragraph 7) for such year. Expenditures by Licensee to national and regional cooperative advertising and promotion of the McDonald's System, or to a group of McDonald's restaurants which includes the Restaurant, shall be a credit against the required minimum expenditures for advertising and promotion to the general public.

6. *Training.* McDonald's shall make available to Licensee the services of Hamburger University, the international training center for the McDonald's System. Licensee acknowledges the importance of quality of business operation among all restaurants in the McDonald's System and agrees to enroll himself and his managers, present and future, at Hamburger University or at such other training center as may be designated by McDonald's from time to time. McDonald's shall bear the cost of maintaining Hamburger University and any other training centers, including the overhead costs of training, staff salaries, materials and all technical training tools and agrees to provide to Licensee both basic and advanced instruction for the operation of a McDonald's System restaurant. Licensee shall pay all travelling, living, compensation or other expenses incurred by Licensee and his employees in connection with attendance at Hamburger University or such other training centers.

7. *Gross Sales.* For the purposes of this Agreement, the term "Gross Sales" shall mean all revenues from sales of the Licensee based upon all business conducted upon or from the Restaurant, whether such sales be evidenced by check, cash, credit, charge account, exchange or otherwise, and shall include, but not be limited to, the amounts received from the sale of goods, wares and merchandise, including sales of food, beverages and tangible property of every kind and nature, promotional or otherwise and for services performed from or at the Restaurant, together with the amount of all orders taken or received at the Restaurant, whether such orders be filled from the Restaurant or elsewhere. Gross Sales shall not include sales of merchandise for which cash has been refunded, provided that such sales shall have previously been included in Gross Sales. There shall be deducted from Gross Sales the price of merchandise returned by customers for exchange, provided that such returned merchandise shall have been previously included in Gross Sales, and provided that the sales price of merchandise delivered to the customer in exchange shall be included in Gross Sales. Gross Sales shall not include the amount of any sales tax imposed by any federal, state, municipal or other governmental authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein, and actually paid by the Licensee to such governmental authority. Each charge or sale upon credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time when the Licensee shall receive payment (whether full or partial) therefor.

8. *Service Fee.* Licensee shall pay a semi-monthly service fee on or before the 1st and 16th day of each month in an amount equal to three and one-half percent (3.5%) of the Gross Sales of the Restaurant for the respective preceding half-month periods immediately ended. Delinquent service fees shall bear simple interest after the respective dates thereof until paid at the highest interest rate allowed by law or if there is no maximum rate permitted by law, at 15% per annum.

9. *Initial Fee.* Licensee acknowledges that: (a) the initial grant of this Franchise constitutes the sole consideration for the payment of an Initial Fee of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) paid by Licensee to McDonald's; and (b) the fee has been earned by McDonald's (except where the construction of the Restaurant has not been completed within one year from the date of the execution and delivery of this Franchise). If the Restaurant has not been constructed or is not ready for occupancy at the time of the execution of this Franchise, McDonald's shall use

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its best efforts to expedite the construction and lease of the Restaurant to Licensee. However, McDonald's shall not be liable to Licensee in any manner for any delays in or lack of completion of such construction for any reason. McDonald's shall be under no obligation to enforce performance or to seek other remedies for non-performance of any lease, clause or contract necessary for the construction of the Restaurant and reserves the right, in case construction of the Restaurant should be abandoned, the lease assigned, or other interest in the premises be relinquished, to terminate this Franchise upon reimbursement to Licensee of the Initial Fee. At such time as the Restaurant is completed and ready for occupancy the Initial Fee shall be deemed to be earned. If the Restaurant is not ready for occupancy within one year from the date of this Franchise, Licensee shall have the right to terminate this Franchise and obtain an immediate refund of the Initial Fee upon written request to McDonald's.

10. **Reports.** On or before the 1st and 16th day of each month, Licensee shall render to McDonald's a statement, in such form as McDonald's shall reasonably require from time to time, of all receipts from the operation of the Restaurant for the respective preceding half-month periods immediately ended. On or before the twenty-fifth (25th) day of each month Licensee shall submit to McDonald's an operating statement and a statistical report for the previous month in form satisfactory to McDonald's. Licensee shall keep and preserve full and complete records of Gross Sales for at least three years in a manner and form satisfactory to McDonald's and shall also deliver such additional financial, operating and other information and reports as McDonald's may reasonably request on the forms and in the manner prescribed by McDonald's. Licensee further agrees to submit within ninety (90) days following the close of each fiscal year of his Restaurant's operation, a profit and loss statement covering operations during such fiscal year and a balance sheet taken as of the close of such fiscal year, all prepared in accordance with generally accepted accounting principles. The profit and loss statement and the balance sheet shall, if McDonald's shall request certification, be certified by a certified public accountant. Licensee shall at his expense cause his public accountant and certified public accountant, if any, to consult with McDonald's concerning such statement and balance sheet. The original of each such report required by this paragraph 10 shall be mailed to McDonald's at the address indicated in paragraph 22 herein.

McDonald's shall have the right to inspect and/or audit Licensee's accounts, books, records and tax returns at all reasonable times to insure that Licensee is complying with the terms of the Franchise. If such inspection discloses that Gross Sales actually exceeded the amount reported by Licensee as his Gross Sales by an amount equal to two percent (2%) or more of Gross Sales originally reported to McDonald's, Licensee shall bear the cost of such inspection and audit.

11. **Restrictions.** Licensee agrees and covenants as follows:

(a) During the term of this Franchise, Licensee shall not, without the prior written consent of McDonald's, directly or indirectly, engage in, acquire any financial or beneficial interest (including interests in corporations, partnerships or trusts, unincorporated associations and joint ventures) in, or become a landlord for any restaurant business, which is similar to the Restaurant operated by the Licensee.

(b) Licensee shall not, for a period of 18 months after termination of this Franchise for any reason or the sale of the Restaurant, directly or indirectly, engage in or acquire any financial or beneficial interest (including any interest in corporations, partnerships or trusts, unincorporated associations and joint ventures) in, or become a landlord of any restaurant business which is similar to the Restaurant operated by the Licensee within a ten-mile radius of said Restaurant.

(c) Licensee shall not appropriate, use, or duplicate the McDonald's System, or any portion thereof, for use at any other self-service, carry-out or other similar restaurant business.

(d) Licensee shall not disclose or reveal any portion of the McDonald's System to a non-licensee other than to his Restaurant employees as an incident of their training.

(e) Licensee shall acquire no right to use, or to license the use of, any name, mark or other intellectual property right granted or to be granted herein, except in connection with the operation of the Restaurant.

The restrictions contained in paragraphs 11(a) and (b) herein shall not apply to ownership of less than two percent (2%) of the shares of a company whose shares are listed and traded on a national or regional securities exchange.

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12. *Compliance with Entire System.* Licensee acknowledges that every component of the McDonald's System is important to McDonald's and to the operation of the Restaurant as a McDonald's restaurant, including a designated menu of food and beverage products; uniformity of food specifications, preparation methods, quality and appearance; and uniformity of facilities and service.

McDonald's shall have the right to inspect the Restaurant at all reasonable times to ensure that Licensee's operation thereof is in compliance with the standards and policies of the McDonald's System.

Licensee shall comply with the entire McDonald's System, including, but not limited to, the following:

(a) Operate the Restaurant in a clean, wholesome manner in compliance with prescribed standards of Quality, Service, and Cleanliness; comply with all business policies, practices and procedures imposed by McDonald's; serve at the Restaurant only those food and beverage products now or hereafter designated by McDonald's; and maintain the building, equipment, signage, seating and decor and parking area, in a good, clean, wholesome condition and repair, and well lighted and in compliance with designated standards as may be prescribed from time to time by McDonald's;

(b) Purchase kitchen fixtures, lighting and other equipment, seating, and signs in accordance with the equipment specifications and layout initially designated by McDonald's, and, promptly after notice from McDonald's that the Restaurant premises are ready for occupancy, cause the installation thereof;

(c) Keep the Restaurant constructed and equipped in accordance with the building blueprints and equipment layout plans that are standard in the McDonald's System or as such blueprints and plans may be reasonably changed from time to time by McDonald's;

(d) Licensee shall not, without the prior written consent of McDonald's: (i) make any building design conversion, or (ii) make any alterations, conversions, or additions to the building, equipment or parking area;

(e) Make repairs or replacements required because of damage, wear and tear, or in order to maintain the Restaurant building and parking area in good condition and in conformity to blueprints and plans;

(f) Where parking is provided, maintain the parking area for the exclusive use of Restaurant customers;

(g) Operate the Restaurant seven days per week throughout the year and at least during the hours from 7:00 a.m. to 11:00 p.m., or such other hours as may from time to time be prescribed by McDonald's (except when the Restaurant is untenantable as a result of fire or other casualty), maintain sufficient supplies of food and paper products, and employ adequate personnel so as to operate the Restaurant at its maximum capacity and efficiency;

(h) Cause all employees of Licensee, while working in the Restaurant, to: (i) wear uniforms of such color, design and other specifications as McDonald's may designate from time to time, (ii) present a neat and clean appearance, and (iii) render competent and courteous service to Restaurant customers;

(i) In the dispensing and sale of food products: (i) use only containers, cartons, bags, napkins and other paper goods and packaging bearing the approved trademarks and which meet the McDonald's System specifications and quality standards which McDonald's may designate from time to time; (ii) use only those flavorings, garnishments and food and beverage ingredients which meet the McDonald's System specifications and quality standards which McDonald's may designate from time to time; and (iii) to employ only those methods of food handling and preparation which McDonald's may designate from time to time;

(j) To make prompt payment in accordance with the terms of invoices rendered to Licensee on his purchase of fixtures, signs, equipment and food and paper supplies;

(k) At his own expense, comply with all federal, state and local laws, ordinances and regulations affecting the operation of the Restaurant.

13. *Best Efforts.* Licensee shall diligently and fully exploit the rights granted in this Franchise by personally devoting full time and best efforts and, in case more than one individual has executed this Franchise as the Licensee, then Fredric E. Beatty shall personally devote full time and best efforts to the operation of the Restaurant. Licensee shall keep free from conflicting enterprises or any other activities which would be detrimental to or interfere with the business of the Restaurant.

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14. *Interference with Employment Relations of Others.* During the term of this Franchise, Licensee shall not employ or seek to employ any person who is at the time employed by McDonald's, any of its subsidiaries, or by any person who is at the time operating a McDonald's restaurant or otherwise induce, directly or indirectly, such person to leave such employment. This paragraph 14 shall not be violated if such person has left the employ of any of the foregoing parties for a period in excess of six months.

15. *Assignment.* Without the prior written consent of McDonald's, Licensee's interest in this Franchise shall not be assigned or otherwise transferred in whole or in part (whether voluntarily or by operation of law) directly, indirectly, or contingently, and then only in accordance with the terms of this paragraph 15.

(a) *Death or Permanent Incapacity of Licensee.* Upon the death or permanent incapacity of Licensee, the interest of Licensee in this Franchise may be assigned either pursuant to the terms of sub-paragraph (d) herein or to one or more of the following persons: Licensee's spouse, heirs, or nearest relatives by blood or marriage, subject to the following conditions: (i) If, in the sole discretion of McDonald's, such person shall be capable of conducting the Restaurant business in accordance with the terms and conditions of this Franchise, and (ii) if such person shall also execute an agreement by which he personally assumes full and unconditional liability for and agrees to perform all the terms and conditions of this Franchise to the same extent as the original Licensee. If, in McDonald's sole discretion, such person cannot devote his full time and best efforts to the operation of the Restaurant or lacks the capacity to operate the Restaurant in accordance with this Franchise, McDonald's shall have an option to operate and/or manage the Restaurant for the account of Licensee or of his estate until the deceased or incapacitated Licensee's interest is transferred to another party acceptable to McDonald's in accordance with the terms and conditions of this Agreement. However, in no event shall such McDonald's operation and management of the Restaurant continue for a period in excess of twelve (12) full calendar months without the consent of Licensee or his estate. In the event that McDonald's so operates and/or manages the Restaurant, McDonald's shall make a complete account to and return the net income from such operation to the Licensee or to his estate, less a reasonable management fee and expenses. If the disposition of the Restaurant to a party acceptable to McDonald's has not taken place within twelve (12) months from the date that McDonald's has commenced the operation or management of the Restaurant on behalf of the deceased or incapacitated Licensee, then, in that event McDonald's shall have the option to purchase the Restaurant at fair market value for cash or its common stock at its option.

(b) *Assignment to Licensee's Corporation.* McDonald's shall, upon Licensee's compliance with such requirements as may from time to time be prescribed by McDonald's, including a Stockholders Agreement in the form prescribed by McDonald's, consent to an assignment to a corporation whose shares are wholly owned and controlled by Licensee. The corporate name of the corporation shall not include any of the names or trademarks granted by this Franchise. Any subsequent assignment or transfer, either voluntarily or by operation of law, of all or any part of said shares shall be made in compliance with the terms and conditions set forth in sub-paragraph (a) and (d) herein.

(c) *First Option to Purchase.* Licensee or his representative shall at least 20 days prior to the proposed effective date give McDonald's written notice of intent to sell or otherwise transfer this Franchise pursuant to sub-paragraph (d) of this paragraph 15. The notice shall set forth the name and address of the proposed purchaser and all the terms and conditions of any offer. McDonald's shall have the first option to purchase the Restaurant by giving written notice to Licensee of its intention to purchase on the same terms as the offer within ten (10) days following McDonald's receipt of such notice. However, if McDonald's fails to exercise its option and the Restaurant is not subsequently sold to the proposed purchaser for any reason, McDonald's shall continue to have, upon the same conditions, a first option to purchase the Restaurant upon the terms and conditions of any subsequent offer.

(d) *Other Assignment.* In addition to any assignments or contingent assignments contemplated by the terms of sub-paragraphs (a) and (b) of this paragraph 15, Licensee shall not sell, transfer or assign this Franchise to any person or persons without McDonald's prior written consent. Such consent shall not be arbitrarily withheld.

In determining whether to grant or to withhold such consent, McDonald's shall consider of each prospective transferee, by way of illustration, the following: (i) work experience and aptitude, (ii) financial background,

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(iii) character, (iv) ability to personally devote full time and best efforts to managing the Restaurant, (v) residence in the locality of the Restaurant, (vi) equity interest in the Restaurant, (vii) conflicting interests, and (viii) such other criteria and conditions as McDonald's shall then apply in the case of an application for a new license to operate a McDonald's restaurant. McDonald's consent shall also be conditioned each upon such transferee's execution of an agreement by which he personally assumes full and unconditional liability for and agrees to perform from the date of such transfer all obligations, covenants and agreements contained in this Franchise to the same extent as if he had been an original party to this Franchise. Licensee-transferor shall continue to remain personally liable for all affirmative obligations, covenants and agreements contained herein for the full term of this Franchise or for such shorter period as McDonald's may, in its sole discretion, determine. Upon each assignment or other transfer of this Franchise to any person or persons under the terms and conditions of this sub-paragraph 15(d), the percentage service fee charge owing to McDonald's after the date of such assignment or transfer shall be automatically adjusted to the then prevailing percentage service fee charge required under new Franchises issued by McDonald's for similar McDonald's restaurants at the time of such assignment or transfer.

16. *Licensee not an Agent of McDonald's.* Licensee shall have no authority, express or implied, to act as agent of McDonald's or any of its affiliates for any purpose. Licensee is, and shall remain, an independent contractor responsible for all obligations and liabilities of, and for all loss or damage to, the Restaurant and its business, including any personal property, equipment, fixtures or real property connected therewith and for all claims or demands based on damage or destruction of property or based on injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of the Restaurant.

17. *Insurance.* Licensee shall, upon taking possession of the Restaurant, acquire and maintain in effect such insurance with such coverages as may be required by the terms of any lease of the Restaurant premises to McDonald's, and in any event, Licensee shall acquire and maintain in effect not less than the following coverages in the following minimum amounts:

(a) Worker's Compensation insurance prescribed by law in the state in which the Restaurant is located and Employer's Liability Insurance with \$100,000 minimum limit. If the state in which the Restaurant is located allows the option of not carrying Worker's Compensation Insurance, and Licensee chooses to exercise that option, Licensee shall nonetheless carry and maintain other insurance with limits at least equal to those established by the state's Worker's Compensation law or as may be approved by McDonald's.

(b) Comprehensive general liability insurance in a form approved by McDonald's with a combined single limit of \$1,000,000.00 for Bodily Injury and Property Damage, per occurrence.

(c) All such insurance as may be required under the Lease.

All insurance policies required to be carried hereunder shall name McDonald's and any party designated by McDonald's as additional insureds, as their interests may appear in this Agreement. All policies shall be effective on or prior to the date Licensee is given possession of the Restaurant premises for the purpose of installing equipment or opening the Restaurant, whichever occurs first, and evidence of payment of premiums and duplicate copies of policies of the insurance required herein shall be delivered to McDonald's at least thirty (30) days prior to the date that Licensee opens for business and/or thirty (30) days prior to the expiration dates of an existing policy of insurance. All policies of insurance shall include a provision prohibiting cancellations or material changes to the policy thereof until thirty (30) days written notice has been given to McDonald's.

In the event Licensee shall fail to obtain the insurance required herein, McDonald's may, but need not, purchase said insurance, adding the premiums paid to Licensee's monthly rent. (Licensee may authorize McDonald's to purchase and to administer the required minimum insurance on Licensee's behalf. However, McDonald's by placement of the required minimum insurance, assumes no premium expense nor guarantees any losses sustained). McDonald's may relieve itself of all obligations with respect to the administration of such required insurance coverage by giving ten (10) days written notice to Licensee.

All insurance shall be placed with a reputable insurance company licensed to do business in the state in which the Restaurant is located and having a Financial Size Category of XV and Policyholders Rating of "A+" or "A" (Excellent) as assigned by Alfred M. Best and Company, Inc.

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18. **Material Breach.** The parties agree that the happening of any of the following events shall constitute a material breach of this Franchise and violate the essence of Licensee's obligations, and, without prejudice to any of its other rights or remedies at law or in equity, McDonald's at its election, may terminate this Franchise upon the happening of any of the following events:

(a) Licensee shall fail to maintain and operate the Restaurant in a good, clean, wholesome manner and in compliance with the standards prescribed by the McDonald's System;

(b) Licensee shall be adjudicated a bankrupt, become insolvent, or a receiver, whether permanent or temporary, for all or substantially all of Licensee's property, shall be appointed by any court, or Licensee shall make a general assignment for the benefit of his creditors, or a voluntary or involuntary petition under any bankruptcy law shall be filed with respect to Licensee and shall not be dismissed within thirty (30) days thereafter;

(c) Any payment owing to McDonald's is not paid within thirty (30) days after the date such payment is due;

(d) Any judgment or judgments aggregating in excess of \$5,000.00 against Licensee or any federal, state or local tax lien in excess of \$5,000.00 against Licensee's property shall remain unsatisfied or unbonded of record in excess of thirty (30) days;

(e) Licensee shall cause, suffer or permit (voluntarily or involuntarily) his right of possession as lessee or sublessee of the premises on which the Restaurant is located to be terminated prematurely for any cause whatever;

(f) Licensee shall acquire any interest in a business in violation of sub-paragraph 11(a);

(g) Licensee shall duplicate the McDonald's System in violation of sub-paragraph 11(c);

(h) Licensee shall make or cause a disclosure of any portion of the McDonald's System in violation of sub-paragraph 11(d) or shall make or cause a disclosure of part of the McDonald's System business manuals;

(i) Licensee shall violate sub-paragraph 11(e) by use of any name, trademark, service mark, or other intellectual property right of McDonald's exceeding the restrictions of said paragraph 11;

(j) Licensee shall knowingly sell food or beverage products other than those designated by McDonald's or which fail to conform to McDonald's System specifications for those products, or which are not prepared in accordance with the methods prescribed by McDonald's, or fail to sell products designated by McDonald's;

(k) Any assignment or other transfer of any interest of the Licensee in this Franchise shall occur in violation of sub-paragraph 15 (d) herein;

(l) Licensee shall deny McDonald's the right to inspect the Restaurant at reasonable times; or

(m) Licensee shall fail to make or make repeated delays in the prompt payment of undisputed invoices from his suppliers or in the remittance of payments as required by this Franchise.

19. **Other Breaches.** If Licensee fails in the performance of any of the terms and conditions of this Franchise (other than performance of the terms and conditions listed in paragraph 18), he shall be guilty of a breach of this Franchise which shall not (except in the case of repeated breaches of the same or of different terms and conditions of the Franchise) constitute grounds for termination of the Franchise. McDonald's shall have the right to seek judicial enforcement of its rights and remedies, including, but not limited to, injunctive relief, damages, or specific performance. Notwithstanding any of the provisions of this paragraph 19, any uncured breach of the terms of this Franchise (whether of paragraph 18 or 19) shall be sufficient reason for McDonald's to withhold approval of its consent to any assignment or transfer of Licensee's interest in the Franchise provided for herein.

20. **Effect of Termination.**

(a) In the event of any material breach of this Franchise, McDonald's shall have an immediate right to enter and take possession of the Restaurant in order to maintain continuous operation of the Restaurant, to provide for orderly change of management and disposition of personal property, and to otherwise protect McDonald's interest.

(b) Upon termination of this Franchise due to any breach or breaches, Licensee shall not, without the prior written consent of McDonald's, remove any furniture, fixtures, signs, equipment or other property or leasehold improvements from the premises either prior to or for a period of thirty (30) days following such termination. McDonald's

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shall have the option for thirty (30) days following any such termination to purchase Licensee's furniture, fixtures, signs, equipment, leasehold improvements and other property or any portion thereof for a sum equal to the fair market value of such property. In the event of such a termination, there shall be no payment by McDonald's for intangible assets of Licensee.

(c) Upon termination of this Franchise due to the expiration of its term or as a result of any eminent domain proceedings affecting the premises upon which the Restaurant is situated, Licensee shall not remove any furniture, fixtures, signs, equipment and other property or leasehold improvements within sixty (60) days prior to the date specified for termination or the date specified for takeover by any public authority. McDonald's shall, upon written notice at least thirty (30) days prior to such date of termination of McDonald's intention to purchase said property, have the option to purchase Licensee's furniture, fixtures, signs, equipment and other chattels or any portion thereof for a sum equal to the fair market value of such physical property. In the event of such a termination, there shall be no payment by McDonald's for intangible assets of Licensee.

(d) Upon termination or expiration of the Franchise, Licensee shall forthwith return to McDonald's the business manuals furnished to him, together with all other material containing trade secrets, operating instructions or business practices; discontinue the use of the McDonald's System and its associated trade names, service marks and trademarks or the use of any and all signs and printed goods bearing such names and marks, or any reference to them; not disclose, reveal or publish all or any portion of the McDonald's System; and Licensee shall not thereafter use any trade name, service mark or trademark similar to or likely to be confused with those of McDonald's.

21. *Effect of Waivers.* No waiver by McDonald's or any breach or a series of breaches of this Franchise shall constitute a waiver of any subsequent breach or waiver of the terms of this Franchise.

22. *Notices.* Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, addressed to Licensee at the Restaurant or to McDonald's at ONE McDONALD'S PLAZA, OAK BROOK, ILLINOIS 60521. Either party, by a similar written notice, may change the address to which notices shall be sent.

23. *Cost of Enforcement.* If McDonald's institutes any action at law or in equity against Licensee to secure or protect McDonald's rights under or to enforce the terms of this Franchise, in addition to any judgment entered in its favor, McDonald's shall be entitled to recover such reasonable attorneys' fees as may be allowed by the court together with court costs and expenses of litigation.

24. *Indemnification.* If McDonald's shall be subject to any claim, demand or penalty or become a party to any suit or other judicial or administrative proceeding by reason of any claimed act or omission by Licensee, his employees or agents, or by reason of any act occurring on the Restaurant premises, or by reason of an omission with respect to the business or operation of the Restaurant, Licensee shall indemnify and hold McDonald's harmless against all judgments, settlements, penalties, and expenses, including attorneys' fees, court costs and other expenses of litigation or administrative proceeding, incurred by or imposed on McDonald's in connection with the investigation or defense relating to such claim or litigation or administrative proceeding and, at the election of McDonald's, Licensee shall also defend McDonald's.

25. *Construction and Severability.* All references in this Franchise to the singular shall include the plural where applicable, and all references to the masculine shall include the feminine and vice-versa. Either reference shall include the feminine. If any part of this Franchise for any reason shall be declared invalid, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect. In the event that any material provision of this Franchise shall be stricken or declared invalid, McDonald's reserves the right to terminate this Franchise.

26. *Scope and Modification of Franchise.* This Franchise (including Exhibit A and any riders hereto) constitutes the entire agreement between the parties and supersedes all prior and contemporaneous, oral or written, agreements or understandings of the parties. No interpretation, change, termination or waiver of any of the provisions hereof shall be binding upon McDonald's unless in writing signed by an officer of McDonald's or its Licensing Director, and which is specifically identified as an amendment hereto. No modification, waiver, termination, rescission, discharge or cancellation of this Franchise shall affect the right of any party hereto to enforce any claim or right hereunder, whether or not liquidated, which occurred prior to the date of such modification, waiver, termination, rescission, discharge or cancellation.

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27. **Governing Laws.** The terms and provisions of this Franchise shall be interpreted in accordance with and governed by the laws of the State of Illinois.

28. **Acknowledgement.** Licensee acknowledges that:

- (a) The term of this Franchise is set forth in paragraph 2(b) hereof with no promise or representation as to the renewal of this Franchise or the grant of a new Franchise.
- (b) Licensee hereby represents that he has received a copy of this Franchise, has read and understands all obligations being undertaken and has had an opportunity to consult with his attorney with respect thereto at least five (5) days prior to his execution thereof;
- (c) No representation has been made by McDonald's as to the future profitability of the Restaurant;
- (d) Prior to the execution of this Franchise, Licensee has worked at a McDonald's restaurant, has had ample opportunity to contact existing licensees of McDonald's and to investigate all representations made by McDonald's relating to the McDonald's System;
- (e) This Franchise establishes the Restaurant at the location specified on page 1 hereof only and that no "exclusive," "protected" or other territorial rights in the contiguous market area of such Restaurant is hereby granted or inferred;
- (f) This Franchise supersedes any and all other agreements, representations, respecting the Restaurant and contains all the terms, conditions, and obligations of the parties with respect to the grant of this Franchise;
- (g) McDonald's is the sole owner of the trademarks, trade names, service marks and good will associated therewith, and Licensee acquires no right, title, or interest in those names and marks other than the right to use them only in the manner and to the extent prescribed and approved by McDonald's;
- (h) No future franchise or offers of franchises for additional McDonald's restaurants, other than this Franchise for the Restaurant, have been promised to Licensee and that any other franchise offer shall only be in writing, executed by an officer of McDonald's and specifically identified as a Franchise Agreement or Rewrite Commitment Letter;
- (i) Neither McDonald's nor anyone acting on its behalf has made any representations, inducements, promises, or agreements, orally or otherwise, respecting the subject matter of this Franchise, which is not embodied herein or set forth in the Uniform Franchise Offering Circular For Prospective Franchisees; and
- (j) This Franchise is offered to Licensee personally and to no others, and may not be accepted by any other person, partnership or corporation, or transferred by assignment, will or operation of law.

IN WITNESS WHEREOF, the parties hereto set their hands and seals, in duplicate, the day and year in this instrument first above written.

McDONALD'S CORPORATION, DBA
DELAWARE-McDONALD'S CORPORATION.

By:

Eugene Stachowiak
EUGENE STACHOWIAK,
ASSISTANT VICE PRESIDENT-FRANCHISING

Prepared By:

Tamara Kontrimas

Fredric E. Beatty 5/15/93
Licensee Date
Fredric E. Beatty

Carolyn S. Beatty 5/15/93
Licensee Date
Carolyn S. Beatty

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L/C 37/1074New Restaurant Rider

This Rider is attached to and incorporated into that certain Franchise Agreement ("Agreement") dated April 29, 1993, by and between McDonald's Corporation, ("McDonald's") d/b/a Delaware McDonald's Corporation and Frédéric E. Beatty and Carolyn S. Beatty ("Licensee").

1. Prior to the opening date of the Restaurant, all construction extras ordered or authorized by Licensee for which McDonald's has paid the parties constructing the Restaurant shall be paid by Licensee to McDonald's.
2. Licensee hereby agrees to the insertion by McDonald's into the Supplement Operator's Lease of dates of commencement and termination, when said dates are ascertained, and the finalized legal description of the Restaurant location.
3. The amount of the monthly base rental payment set forth in the Operator's Lease is computed based in part upon total current real estate and estimated construction costs. If such costs increase more than \$10,000.00 from now until 120 days after Restaurant opening, the monthly base rental payment will be recomputed and increased based upon said increased costs, but only to a maximum monthly base rental increase of \$325.00, according to the same rental formula. The corresponding monthly base sales will be adjusted accordingly. The effective date of said increase will be 120 days after Restaurant opening.
4. A non-interest bearing deposit of \$15,000.00 as security for the faithful performance of the terms of the Franchise Agreement (including the Lease), will be transferred from your restaurant located at Liberty Boulevard & Route 219, DuBois, Pennsylvania. This deposit will, subject to offset of losses by McDonald's arising from your breach of this Franchise Agreement, be returned to you at the end of the Franchise term as more specifically provided under the Lease.
5. The total site development and construction costs used to calculate this rental have been reduced by your contribution of \$91,250.00
6. This Franchise is also subject to your execution and delivery to us of a Franchise Termination Agreement dated April 29, 1993, pertaining to the McDonald's restaurant located at Liberty Boulevard & Route 219, DuBois, Pennsylvania.

DuBois, Pennsylvania:
 S.R. 255
 L/C: 37-1074
 File# 10,729

EXHIBIT A TO FRANCHISE AGREEMENT

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OPERATOR'S LEASE

THIS LEASE shall be considered effective the same date as the Franchise Agreement dated April 29, 1993, to which it is attached (the "Franchise Agreement"). The term "Landlord," when used in this Lease, shall refer to McDonald's Corporation and the term "Tenant," when used in this Lease, shall refer to the undersigned Tenant.

In consideration of the mutual promises contained in this Lease, the parties agree as follows:

ARTICLE 1 SUMMARY OF FUNDAMENTAL LEASE PROVISIONS

1.01 **Term:** (See Article 2.02) The term of this Lease will begin on the date the McDonald's Restaurant constructed on the Premises opens for business and will end twenty (20) years thereafter.

1.02 **Rent:** See Article 3.01 and Schedule B, attached.

1.03 **Security Deposit:** \$15,000.00 Cash (See Article 3.07)

1.04 **Legal Description:** See Schedule A and Article 2.01.

1.05 **Liability Insurance Limits:** \$1,000,000.00, per occurrence.

1.06 **Attachments, Exhibits and Addenda:** This Lease includes the following Attachments, Schedules and Addenda which will take precedence over conflicting provisions (if any) of this Lease, and they are made an integral part of this Lease and are fully incorporated into it by this reference.

- A. Schedule A -- Legal Description
- B. Schedule B -- Rent
- C. Easement dated December 24, 1992

References in this Article to the other Articles in this Lease are for convenience and to designate some of the other Articles where references to particular Fundamental Lease Provisions will be made. If there is any conflict between a Fundamental Lease Provision and the balance of the Lease, the former will control.

ARTICLE 2 PREMISES AND TERM

2.01 Premises: Landlord leases to Tenant the real estate described in Schedule A, attached, together with all easements and appurtenances and all buildings and improvements located on the real estate (all of which are collectively referred to in this Lease as "the Premises"). The Premises are subject to any easements, conditions, encumbrances, restrictions, and party wall agreements, if any, of record and roads and highways and zoning and building code restrictions existing on the date of this Lease.

2.02 Term: The term of this Lease will be as indicated in Article 1.01, subject, however, to any rights set forth in this Lease for the earlier termination of the Lease term. At the request of either party, a supplement establishing the beginning and ending dates of this Lease shall be executed. Landlord may establish the beginning date by notifying the Tenant in writing of the date it recognizes as the beginning date of the term.

2.03 Quiet Enjoyment: Landlord promises that Tenant, upon paying the rent and all other charges provided for in this Lease, and upon observing and keeping all Tenant's obligations, will lawfully and quietly hold, occupy and enjoy the Premises during the term of this Lease, without hindrance or interference by anyone claiming by, through or under Landlord, subject to the terms of this Lease and any mortgage or encumbrance now or hereafter placed on the Premises by Landlord.

2.04 Use of Premises: Tenant will use and occupy the Premises solely for a McDonald's Restaurant selling only such products and operating in a manner that may be designated by McDonald's Corporation. Tenant agrees to continuously occupy the Premises during the term of this Lease and agrees not to vacate them. A breach of this provision will be deemed to be substantial. If Tenant vacates the Premises during the term of this Lease, Landlord will have the right, in addition to its other rights and remedies, to enter the Premises for the purpose of continuing the operation of the McDonald's Restaurant; and, if Landlord so elects, Landlord shall be entitled to all profits, if any, from the operation of the restaurant. Tenant further agrees to conduct its restaurant business in a manner that will maximize Gross Sales. Tenant agrees to purchase, install and maintain, all at its own expense, signs and trade fixtures and equipment in accordance with the plans, specifications and layouts of McDonald's Corporation, or any of its subsidiaries, unless these items have been furnished by Landlord.

2.05 Rule Against Perpetuities: If the term of this Lease or the accrual of rent have not commenced within one (1) year from date of execution of this Lease, this Lease will become null and void and of no further force and effect. The sole remedy of Tenant in such case is the return of any monies paid to Landlord in anticipation of this Lease.

2.06 Construction and Delivery of Building and Other Improvements: Landlord will construct or have others construct or remodel or otherwise prepare the Premises for a McDonald's Restaurant in accordance with the then current plans and specifications of McDonald's Corporation. The Premises will be delivered to Tenant when they are sufficiently completed to allow Tenant to install, at Tenant's sole cost and expense, the signs, trade fixtures, equipment and other personal property and improvements necessary to complete the Premises for the operation of a McDonald's Restaurant, unless otherwise provided in Article 1.04. Tenant will promptly and diligently perform its work in accordance with the plans and specifications previously submitted by or to Tenant and approved by Landlord and in compliance with all applicable federal, state and local statutes, codes and regulations. Tenant will do all that is reasonably necessary to promptly open the restaurant as soon as possible after delivery of the Premises to the Tenant.

2.07 Acceptance of Premises: By taking possession of the Premises, Tenant acknowledges that Tenant has inspected the Premises and the improvements thereon and found them to be in a safe, satisfactory, and completed condition, ready for occupancy and the installation of trade fixtures,

equipment and signage. All warranties as to the condition of the Premises or its fitness for use, either expressed or implied, are expressly waived by Tenant. Tenant may, however, receive certain warranties and guarantees, by separate agreement, from McDonald's Corporation or one of its subsidiaries; but those warranties will be personal covenants, only, and will not be binding upon the successors and assigns of Landlord.

2.08 Tenant's Compliance With Various Requirements: Tenant may not use or permit any person to use the Premises or any part of it for any use in violation of federal, state or local laws, including, but not limited to, present and future ordinances or other regulations of any municipality in which the Premises are situated. Tenant will not use or permit any person to use the Premises or any building thereon for the manufacture or sale of intoxicating liquor of any kind whatsoever. Tenant will not operate any coin or token operated vending or similar device for the sale of any goods, wares, merchandise, food, beverages or services, including but not limited to, pay telephones, pay lockers, pay toilets, scales, amusement devices, and machines for the sale of beverages, foods, candy, cigarettes or other commodities. A pay telephone may be installed for the use of Tenant's employees, only, if it is not accessible to the patrons and customers of the McDonald's Restaurant. During the term of this Lease, Tenant will keep the Premises and all buildings in a clean and wholesome condition and repair and will maintain the Premises so that they fully comply with all lawful health and police regulations. Tenant will conduct the McDonald's Restaurant on the Premises strictly in accordance with the terms and provisions of the Franchise Agreement. Tenant will minimize all cooking odors and smoke, maintain the highest degree of sanitation and comply with all ordinances, orders, directives, rules and regulations of all governmental bodies, bureaus and offices having jurisdiction over Tenant and over the Premises. Landlord makes no warranties or representations as to the state of such ordinances, rules, orders and directives, regulations, and Tenant acknowledges that Tenant has independently investigated them and will comply with them. Landlord makes no warranties or representations that the Premises, when accepted by Tenant, conform with the Federal, State or Industrial Safety Codes. Tenant will obtain, keep in full force and effect, and strictly comply with, all governmental licenses and permits which may be required for Tenant's use and occupancy of the Premises and the operation of the McDonald's Restaurant.

ARTICLE 3 RENT, TAXES, RECORDS AND REPORTS

3.01 Rent: Tenant promises to pay rent to Landlord, without offset or deduction, as follows:

A. Basic Rent: Tenant will pay monthly to Landlord the Basic Rent indicated in Schedule B, attached. The first Basic Rental payment will be due and payable on the commencement date of the term, and the subsequent monthly rental payments will be due thereafter, in advance, on or before the first day of every succeeding calendar month. If the date of commencement of rent occurs on a day other than the first day of the month, the first rental payment (both of Basic Rent and Percentage Rent, if any, and the last rental payment, if applicable) will be adjusted for the proportionate fraction of the whole month so that all rental payments, other than the first, will be made and become due and payable on the first day of each month.

B. Percentage Rent: In addition to the Basic Rent, Tenant promises to pay Percentage Rent to Landlord in the amount and during the periods set forth in Schedule B, attached, on all Gross Sales from the Premises in excess of the Monthly Gross Sales set forth in Schedule B, attached. See Article 3.03 for the manner of payment of Percentage Rent.

C. Definition of "Gross Sales": For the purposes of this Lease, the term "Gross Sales" will mean all receipts (cash, cash equivalent, credit or redeemed gift certificates) or revenue from sales by Tenant, and of all others, from all business conducted upon or from the Premises, whether such sales be evidenced by check, cash, credit, charge account, exchange or otherwise, and will include, but not be limited to, the amount received from the sale of goods, wares and merchandise, including sales of food, beverages and tangible property of every kind and nature, promotional or otherwise, and for services performed at the

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Premises, together with the amount of all orders taken or received at the Premises, all as may be prescribed or approved by the Franchise Agreement. Gross Sales will not include sales of merchandise for which cash has been refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided that such returned or exchanged merchandise will have been previously included in Gross Sales. Gross Sales will not include the amount of any sales tax imposed by any federal, state or other governmental authority directly on sales and collected from customers, provided that the amount of the tax is added to the selling price and actually paid by Tenant to such governmental authority. Each charge or sale upon installment or credit will be treated as a sale for the full price in the month during which such charge or sale is made irrespective of the time when Tenant receives payment (whether full or partial). In addition, Landlord may, from time to time, permit or allow certain other items to be excluded from Gross Sales. However, any such permission or allowance may be revoked or withdrawn at the discretion of Landlord and will not stop Landlord from requiring strict compliance with the terms of this Lease.

D. Taxes and Assessments: In addition to the Basic Rent and the Percentage Rent, Tenant will pay, as further additional charges, all real estate taxes and special and general assessments which may become due and payable by Landlord during the term or any extension of this Lease, including those taxes specifically designated as taxes in Landlord's Head Lease, if applicable, whether paid separately or included in rent to the Head Landlord. Landlord will first pay, when due, all taxes (except for Personal Property Taxes) and assessments, and Tenant will then promptly reimburse Landlord upon receipt of a billing advice from Landlord for all real estate tax and assessment payments made by Landlord to the taxing authority or the fee owner of the demised premises, if required by the Head Lease, as the case may be.

(a) **First and Last Year:** All real estate taxes and general and special assessment payments of every nature paid by Landlord during the first and last year of the term of this Lease will be prorated. This tax proration will be based upon the fiscal year of the taxing authority levying the tax, using the percentage of the taxes payable during the first or last tax fiscal year that Tenant actually occupies, or had the right to occupy, the demised premises.

(b) **Rent Taxes:** Tenant will also pay promptly, when due, any tax which is levied or assessed against the rental, real or tangible personal property, whether or not called a rental tax, excise tax, sales tax, gross receipts tax, tax on services or otherwise; and Tenant will promptly reimburse Landlord for any similar tax which Landlord is required to pay or, in fact, does pay. Such payment or reimbursement will not be deducted from Gross Sales.

(c) **Personal Property Taxes:** Tenant agrees to pay all personal property taxes levied upon the fixtures, equipment and other improvements located on the Premises whether installed and paid for by Tenant or Landlord. The personal property taxes for the first and last year of the term of this Lease will be prorated in the same manner as the real estate taxes and assessments.

(d) **Appeal:** Subject to Landlord's rights under the Head Lease (if any), Tenant, at Tenant's sole expense, is authorized and hereby permitted to contest and appeal property tax assessments on the demised premises, and Landlord will cooperate with and assist Tenant in any reasonable manner.

E. Other Charges and Expenses: Any other charge or expense of any nature which Landlord may be required to pay by virtue of Landlord's ownership or leasehold interest in the Premises (including, but not limited to, common area maintenance charges, merchant's association's dues, utility charges, fees and taxes and security service fees) will be promptly paid to Landlord as additional charges. Landlord will pay these charges, and Tenant will promptly reimburse Landlord upon receipt of a bill or statement from Landlord.

F. Method and Proof of Payment: With respect to Articles 3.01 (D) and (E), above, or any other provision in this Lease which requires or contemplates Landlord first paying any charge or expense and then seeking reimbursement from Tenant, Landlord may, at its exclusive option, require Tenant to make such payments directly to the taxing authority, Head Landlord (if applicable), utility company or other party due a payment for which Tenant is liable under this Lease.

If Landlord wishes to exercise this option, Landlord shall notify Tenant of its election and shall supply Tenant with all information reasonably necessary to properly begin making such payments. From that time on, Tenant shall make such payments directly and all penalties and expenses thereafter accruing shall be the responsibility of Tenant. If Landlord so requests, Tenant shall promptly provide to Landlord reasonable proof of payment, including, but not limited to, receipted bills, canceled checks and certified statements.

Landlord reserves the right, upon further notice to Tenant, to cancel its election and to resume Landlord's payment and Tenant's reimbursement of these charges and expenses as provided in Articles 3.01 (D) and (E), above.

3.02 Records: Tenant will keep and preserve upon the Premises complete written records of all Gross Sales conducted in any calendar or business year for a period of three (3) years, in a manner and form satisfactory to Landlord. Tenant will permit Landlord or Landlord's representatives to examine or audit the records at any and all reasonable times, and will, upon Landlord's request, explain the method of keeping records. The books and records will include cash register tapes, properly identified, over-ring slips, sales journals, general ledger, profit and loss statements, balance sheets, purchase invoices, bank statements with canceled checks and deposit advices, corporate books and records, management company books, including, but not limited to, minute books and stock certificate books, state sales tax returns, federal income tax returns, retailer's occupation tax returns or similar returns required to be filed by the state in which the Premises are located.

3.03 Reports: Within ten (10) days after the end of each calendar month during the term of this Lease, Tenant will deliver to Landlord, at the place last fixed for the payment of rent, a statement by Tenant or Tenant's authorized representative, reflecting Gross Sales during the preceding month, and Tenant will pay at that time to Landlord all sums due based upon Gross Sales as shown in the statement for the period covered by the statement. Within thirty (30) days following the expiration of each calendar year of the term of this Lease, Tenant will deliver to Landlord at the place last fixed for the payment of rent, a statement of Gross Sales for the preceding calendar year (certified, at Tenant's expense, if requested by Landlord, by a Certified Public Accountant of good standing and reputation in the state in which the Premises are located) which will show Gross Sales separately for each monthly period during the preceding year.

A. Discrepancy in Reports: If there is a discrepancy between Gross Sales as reported by Tenant's monthly statements and the Gross Sales as shown in the annual statement, the annual statement will be deemed the final statement of Gross Sales for the year and the Percentage Rent will be adjusted accordingly. If, by virtue of any adjustment, any money is due from Tenant to Landlord, Tenant will pay such sum concurrently with the delivery of the annual statement. If there is any money due from Landlord to Tenant, Landlord will promptly pay such amount to Tenant.

B. Default in Reporting: Upon failure of Tenant to prepare and deliver promptly any monthly or annual statement required by this Lease or to make any required payment, Landlord may elect to treat Tenant's failure as a substantial breach of this Lease entitling Landlord to terminate this Lease and Tenant's right to possession of the Premises.

C. Inspection of Records by Landlord: If Landlord is dissatisfied with statements furnished by Tenant, Landlord may notify Tenant, and Landlord, at its option, may then examine Tenant's books or

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have a Certified Public Accountant selected by Landlord examine Tenant's books. If such examination discloses any underpayment of Percentage Rent, Tenant will promptly pay the deficient amount. If Tenant contests such deficiency, Landlord will then appoint an independent auditor to examine Tenant's books and records. If the independent audit confirms that there has been an underpayment exceeding two percent (2%) of the Percentage Rent, as represented by Tenant, Tenant will, in addition to the above, reimburse Landlord for the cost of the auditor's examination.

3.04 No Abatement of Rent: Except as provided in this Lease, damage to or destruction of any portion or all of the buildings, structures and fixtures upon the Premises, by fire, the elements or any other cause, whether with or without fault on the part of Tenant, will not terminate this Lease or entitle Tenant to surrender the Premises or entitle Tenant to any abatement of or reduction in the rent payable, or otherwise affect the respective obligations of the parties, any present or future law to the contrary notwithstanding, subject to Section 6.05 in this Lease.

3.05 Interest on Past Due Rent: All rent and other sums that may become due and owing from Tenant to Landlord will bear interest from their respective due dates at the highest rate of interest permitted by law in the state in which the Premises are located or, if there is no maximum rate permitted by law, at 15% per annum.

3.06 Lien for Rent: Tenant grants to Landlord a lien upon all Tenant's property located on the Premises, from time to time, for all rent and other sums due from Tenant to Landlord under the provisions of this Lease.

3.07 Security Deposit: Tenant, as security for the performance of its obligations under this Lease or the Franchise Agreement, has deposited with Landlord the sum indicated in Article 1.03. Landlord, or its successors or assigns, will retain the Security Deposit as long as this Lease is in force and, unless otherwise required by law, without any obligation for the payment of interest and with full authority to commingle it with any other funds until the cessation of liabilities of Tenant under the Lease, at which time Landlord or its successors or assigns are bound, within 30 days, to repay so much of the amount of the Security Deposit as may not have been used to cure Tenant's defaults. If there is a default by Tenant in any of Tenant's obligations or any of the terms, covenants, agreements and conditions of this Lease or the Franchise Agreement, Landlord may, in addition to other remedies available, use, apply or retain all or any part of the Security Deposit to cure any default of Tenant, or otherwise make itself whole for any damage or expense occasioned thereby. This shall include any damages and expenses or deficiencies in the reletting of the Premises, regardless of whether the accrual of such damage, expenses or deficiencies occurred before or after eviction or summary or other re-entry by Landlord.

If Landlord resorts to the Security Deposit, Tenant will promptly restore the amount of such Security Deposit so that the sum will remain intact at all times. Upon any assignment by Landlord of its interest in this Lease, Landlord and subsequent assignors will be fully released and discharged of any liability with respect to any Security Deposit made by Tenant under this Lease upon procuring an assumption from the assignee of all of Landlord's responsibilities with respect to the Security Deposit. Tenant will not assign or encumber the Security Deposit and Landlord will not be bound by any such assignment or encumbrance.

ARTICLE 4 OBLIGATIONS OF TENANT

4.01 Utilities: Tenant will pay directly all charges for gas, electricity, or other utilities, sewer charges, taxes and driveway fees, if applicable, and for all water used on the Premises as such charges become due. Tenant's obligation to pay the foregoing charges will commence five (5) days after Tenant's equipment is delivered to the Premises.

4.02 **Maintenance and Repair:** Tenant will, at its expense, (a) keep the entire Premises, all improvements, utility lines and Tenant's or Landlord's fixtures and equipment at all times in good repair, order or condition; (b) replace all broken, damaged or missing personal property, fixtures or equipment; and (c) at the expiration of the term of this Lease, whether by lapse of time or otherwise, surrender the Premises in good repair, order and condition, ordinary wear and tear excepted, and loss by fire and other casualty excepted to the extent that provision for such exception may elsewhere be made in this Lease. Upon request of Landlord, Tenant will remove all signs and other identifying features from the Premises. Tenant's obligation to make repairs to the premises will include all repairs, whether ordinary or extraordinary, including structural repairs to the foundation, floors, walls and roof.

4.03 **Alterations:** Tenant shall not make any change in, alteration of, or addition to any part of the Premises, or remove any of the buildings or building fixtures without, in each instance, obtaining the prior written consent of Landlord and complying with all governmental rules, ordinances and regulations.

4.04 **Surety:** Before commencement of any construction or installation of any structure, fixture, equipment or other improvement on the Premises, or of any repairs, alterations, additions, replacement or restoration in, on or about the Premises, Tenant will give Landlord written notice specifying the nature and location of the intended work and the expected date of commencement. Tenant will deposit with Landlord, if requested by Landlord, a certificate or other evidence satisfactory to Landlord that Tenant has obtained a bond or that Tenant's building contractor, if any, has furnished a bond in favor of Landlord, with a surety approved by Landlord, guaranteeing the performance and completion of all work free and clear of all liens arising from such work. Landlord reserves the right to withhold its approval of any proposed construction, improvement, repair, alteration or replacement and, without limiting the generality of the foregoing, may require as a condition of its approval that it be permitted to review and approve any contract entered into by Tenant regarding such notices as may be necessary to protect Landlord against liability for liens and claims.

4.05 **Liens Against Property:** Nothing in this Lease will authorize Tenant to do any act which will in any way encumber the title of Landlord to the Premises. The interest or estate of Landlord or the fee owner in the Premises, if Landlord is not the fee owner, will not in any way be subject to any claim by lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Tenant. Tenant will not permit the Premises to become subject to any mechanics', laborers' or materialsmen's lien for labor or material furnished to Tenant in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction of, or sufferance of, Tenant.

If any lien is filed against the Premises or Tenant's interest in this Lease, at Landlord's option, Tenant will either pay the amount of the lien in full or will, upon demand of Landlord, provide and pay for a non-cancelable bond, placed with a reputable company, approved by Landlord, in an amount deemed sufficient by Landlord, insuring the interest of Landlord and any mortgagee from any loss by reason of the filing of such lien. Tenant will immediately pursue in good faith its legal remedies to remove a lien on the Premises.

4.06 **Assignment by Tenant:** Tenant will not allow or permit any transfer of this Lease or any interest in this Lease by operation of law, or assign, convey, mortgage, pledge or encumber this Lease or any interest in this Lease, or permit the use or occupancy of the Premises or any part thereof without, in each case, obtaining Landlord's prior written consent. No assignment (with or without Landlord's consent) will release Tenant from any of its obligations in this Lease. Tenant will also assign its interest in the Security Deposit if Landlord consents to an assignment of this Lease. Notwithstanding the foregoing, Landlord shall consent to an assignment by Tenant of his rights and interest in this Lease if the Tenant complies with the terms and conditions of the Franchise Agreement pertaining to the assignment of the Franchise Agreement.

4.07 Franchise Agreement: Tenant will comply with and perform all covenants contained in the Franchise Agreement. Tenant's breach of any of the terms and covenants of the Franchise Agreement will also constitute a breach of this Lease. Termination, default or revocation of the Franchise Agreement for any reason, either in whole or in part, will also terminate this Lease, without further notice being required.

ARTICLE 5 FIXTURES AND EQUIPMENT

5.01 Fixtures: All buildings and improvements and all plumbing, heating, lighting, electrical and air conditioning fixtures and equipment and all other articles of property which, at the date Tenant takes possession of the Premises, are the property of Landlord or of the fee owner of the premises are and will remain a part of the real estate and be considered to be leased in this Lease. Any additions, alterations or remodeling of improvements made to the Premises will immediately become the property of Landlord and will not be removed by Tenant at the termination of this Lease by lapse of time or otherwise.

5.02 Removal of Tenant's Property: At or prior to the termination of this Lease, whether by lapse of time or otherwise, Tenant will, subject to any rights of Landlord under the Franchise Agreement, remove all of its personal property and trade fixtures from the Premises and will repair any damage to the Premises which may have been caused by such removal.

ARTICLE 6 INSURANCE AND DAMAGE TO PROPERTY

6.01 Liability Insurance: Tenant will pay for and maintain during the entire term of this Lease the following insurance:

(A) Worker's Compensation Insurance prescribed by law in the state in which the Premises are located and Employer's Liability Insurance with \$100,000 minimum limit. If the state in which the premises are located allows the option of carrying no Worker's Compensation, and Tenant chooses to exercise that option, Tenant shall nonetheless carry and maintain other insurance with limits at least equivalent with those established for the State Worker's Compensation law or as may be approved by the Landlord.

(B) Comprehensive General Liability Insurance in a form approved by Landlord, on an occurrence basis, with a combined single limit for Bodily Injury and Property Damage as described in Article 1.05.

(C) Fire Legal Liability Insurance with limits of \$500,000 per occurrence.

6.02 Rental Insurance: Tenant will maintain and keep in force rental insurance in an amount equal to not less than the total of one year's Basic Rent as specified in Article 1.02 of this Lease.

6.03 Property Insurance: Tenant will maintain and keep in force, all risk insurance, including flood, earthquake and earth movement coverage, upon the Premises, operational equipment, signs, furnishings, decor, plate glass and supplies, in a so-called replacement cost form obligating the insurer to pay the full cost of repair or replacement. It is intended that neither Landlord nor Tenant will be a co-insurer, and to that end, if the insurance proceeds are not adequate to rebuild the building or other improvements located on the Premises, Tenant will be obligated for the difference between the proceeds obtained and the actual cost of the restoration of the improvements on the Premises and fixtures and equipment.

6.04 Placement and Policies of Insurance: All insurance policies required to be carried in this Lease will name Landlord and any party designated by Landlord as additional insured. All policies will be effective on or prior to the date Tenant is given possession of the Premises for the purpose of installing equipment, and evidence of payment of Premiums and duplicate copies of policies of the insurance

required in this Lease will be delivered to Landlord at least thirty (30) days prior to the date that Tenant opens for business or thirty (30) days prior to the expiration dates of an existing policy of insurance. All policies of insurance will include as an additional insured any mortgagee, as its interest may appear, and will include provisions prohibiting cancellations or material changes to the policy until thirty (30) days prior written notice has been given to Landlord.

If Tenant should fail to obtain the required insurance, Landlord may, but need not, purchase the insurance, adding the premiums paid to Tenant's monthly rent. Tenant may authorize Landlord to purchase and to administer the required minimum insurance on Tenant's behalf. However, Landlord, by placement of the required minimum insurance, assumes no premium expense nor guarantees any losses sustained by Tenant. Landlord may relieve itself of all obligations with respect to the administration of the required insurance coverage by giving ten (10) days written notice to Tenant.

All insurance will be placed with a reputable insurance company licensed to do business in the state in which the Premises are located and, having a financial size category of XV, or a company acceptable to Landlord, and a policy holders rating of "A+" or "A" (excellent), as assigned by Alfred M. Best and Company, Inc. Tenant further agrees to increase the various insurance coverages specified above from time to time upon the written request of Landlord to meet changing economic conditions and requirements imposed upon Landlord under the Landlord's Head Lease and loan agreements, if any.

6.05 Repair and Replacement of Buildings: If the building on the Premises is damaged by fire or any other casualty, Landlord will, within a reasonable time from the date of the damage or destruction, repair or replace the building so that Tenant may continue in occupancy. Landlord's obligation to rebuild or restore the Premises will, however, be only to the extent of insurance proceeds recovered. Basic Rent required to be paid in this Lease will not abate during the period of untenantability. If the building cannot be replaced or repaired within a reasonable time due to the inability of Landlord to obtain materials and labor, or because of strikes, acts of God or governmental restrictions that would prohibit, limit or delay the construction, then the time for completion of the repair or replacement will be extended accordingly. However, in any event, if the repair or replacement of the building has not been commenced within a period of one (1) year from the date of the damage or destruction, Tenant or Landlord may, at their option, terminate this Lease. If any damage or destruction occurs during the last five (5) years of the term of this Lease to the extent of 50% or more of the insurable value of the building, Landlord may, by notice to Tenant within forty (40) days after the occurrence of the damage or destruction, in lieu of repairing or replacing the building, elect to terminate this Lease as of the date of the damage or destruction. Tenant hereby expressly waives and releases any and all claims against Landlord for damages in case of Landlord's failure to rebuild or restore the building in accordance with the provisions of this section. Tenant's sole remedy for any such failure will be to elect to terminate this Lease as of the date of occurrence of the damage or destruction. If the building and other improvements are not repaired, restored or replaced, for any reason, all proceeds of the fire and extended coverage insurance applicable to the building and other permanent improvements will be paid and given to Landlord. Tenant agrees to execute and deliver any release or other document Landlord may request to obtain the release or control of the proceeds.

If Landlord repairs and restores the premises, as required above, Tenant agrees to promptly repair, replace, restore or rebuild Tenant's leasehold improvements, equipment and furnishings ("Tenant's Improvements") in accordance with the current standards and specifications for McDonald's Restaurants upon notice from Landlord that the Premises are ready for Tenant's Improvements. Tenant agrees to submit for Landlord's approval, all plans and specifications for Tenant's Improvements to Landlord within 30 days after Landlord delivers its plans and specifications for the restored Premises to Tenant.

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ARTICLE 7 RIGHTS OF LANDLORD

7.01 Inspection by Landlord: Landlord or any authorized representative of Landlord may enter the Premises at all times during reasonable business hours for the purpose of inspecting the Premises.

7.02 Indemnity for Litigation: If Landlord becomes subject to any claim, demand or penalty or becomes a party to any suit or other judicial or administrative proceeding by reason of any act occurring on the Premises, or by reason of an omission with respect to the business or operation of the McDonald's Restaurant, Tenant will indemnify and hold Landlord harmless against all judgments, settlements, penalties, and expenses, including reasonable attorney's fees, court costs and other expenses of litigation or administrative proceeding incurred by or imposed on Landlord in connection with the investigation or defense relating to such claim or litigation or administrative proceeding. At the election of Landlord, Tenant will also defend Landlord.

Tenant will pay all costs and expenses, including reasonable attorney's fees, which may be incurred by Landlord in enforcing any of the covenants and agreements of this Lease. All such costs, expenses and attorney's fees will, if paid by Landlord, together with interest, be additional rent due on the next rent date after such payment or payments.

7.03 Waiver of Claims: Landlord and Landlord's agents and employees will not be liable for, and Tenant waives claims for, damage to persons or property sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises or the building of which they are a part, including, but not limited to, claims for damage resulting from: (a) equipment or appurtenances becoming out of repair; (b) Landlord's failure to keep the building or the Premises in repair; (c) injury done or occasioned by wind, water or other natural element; (d) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water and steam pipes, stairs, porches, railings or walks; (e) broken glass; (f) the backing up of any sewer pipe or downspout; (g) the bursting, leaking or running of any tank, tub, washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or Premises; (h) the escape of steam or hot water (it being agreed that all the foregoing are under the control of Tenant); (i) water being upon or coming through the roof, skylight, trapdoor, stairs, walks or any other place upon or near such building of the Premises or otherwise; (j) the falling of any fixture, plaster or stucco; (k) interruption of service of any utility.

7.04 Re-entry Upon Default: If (a) Tenant defaults in the payment of any installment of Basic Rent or Percentage Rent or any additional sum due in this Lease; (b) Tenant defaults in any of the covenants, agreements, conditions or undertakings to be performed by Tenant other than the payment of rent (Basic and Percentage Rent or additional charges) and such default continues for ten (10) days after notice in writing to Tenant; (c) Tenant defaults in any of the terms of the Franchise Agreement or if the Franchise Agreement should terminate, whether by lapse of time or otherwise; (d) proceedings in bankruptcy or for liquidation, reorganization or rearrangement of Tenant's affairs are instituted by or against Tenant; (e) a receiver or trustee is appointed for all or substantially all of Tenant's business or assets on the grounds of Tenant's insolvency; (f) a trustee is appointed for Tenant after a petition has been filed for Tenant's reorganization under the Bankruptcy Act of the United States; (g) Tenant makes an assignment for the benefit of its creditors; or (h) Tenant vacates or abandons the Premises, then in any of the above events, Landlord, at its election, may declare the term of this Lease ended and, either with or without process of law, re-enter, expel, remove and put out Tenant and all persons occupying the Premises under Tenant, using such force as may be necessary in so doing, and repossess and enjoy the Premises. Such re-entry and repossession will not work a forfeiture of the rents to be paid or terminate the covenants to be performed by Tenant during the full term of this Lease.

Upon the expiration of the term of this Lease by reason of any of the events described above, or in the event of the termination of this Lease or right to possession by summary dispossession proceedings or

under any provision of law now or at any time in force, whether with or without legal proceedings, Landlord may, at its option, relet the Premises or any part for the account of Tenant and collect the rents therefor, applying them first to the payment of expenses Landlord may have in recovering possession of the Premises, including legal expenses and attorney's fees, and for putting the Premises into good order or condition or preparing or altering the same for re-rental, expenses, commissions and charges paid, assumed or incurred by Landlord in reletting the Premises, and then to the fulfillment of the covenants of Tenant in this Lease. Any such reletting may be for the remainder of the term of this Lease or for a longer or shorter period. In any case and whether or not the Premises or any part thereof is relet, Tenant will pay to Landlord the Basic Rent, any additional charges, and all other charges required to be paid by Tenant up to the time of termination of this Lease, or of recovery of possession of the Premises by Landlord, as the case may be. Thereafter, Tenant covenants and agrees, if required by Landlord, to pay to Landlord, until the end of the term of this Lease, the equivalent of the amount of all the Basic Rent reserved in this Lease and all other charges required to be paid by Tenant, less the net income of reletting, if any. These payments will be due and payable by Tenant to Landlord on the rent days above specified. In any of the circumstances described above, Landlord will have the election to recover against Tenant, as damages for loss of the bargain and not as a penalty, an aggregate sum which, at the time of such termination of this Lease, or of such recovery of possession of the Premises by Landlord, represents the then present worth of the excess, if any, of the aggregate of the Basic Rent and all other charges payable by Tenant in this Lease that would have accrued for the balance of the term over the aggregate rental value of the Premises for the balance of the term. Nothing in this Lease contained will limit or prejudice Landlord's right to prove and obtain as liquidated damages arising out of such breach or termination the maximum amount allowed by any statute or rule of law which may govern the proceeding in which such damages are to be proved, whether such amount be greater, equal to, or less than, the amount of the then present worth of the excess of the Basic Rent and all other charges payable by Landlord in this Lease over the rental value referred to above.

7.05 Holding Over: Tenant will not hold over beyond the expiration or sooner termination of the term of this Lease. If Tenant does hold over, it will give rise to a tenancy at the sufferance of Landlord upon the same conditions as are provided for in this Lease with a monthly rental for the period of such holding over which is double the monthly installment of Basic Rent and Percentage Rent last paid by Tenant during the term of this Lease, and interest thereon, as liquidated damages, and not as a penalty. Landlord's acceptance of any rent after holding over begins does not renew this Lease. This provision does not waive Landlord's rights of re-entry or any other right in this Lease resulting from Tenant's breach of the covenant not to hold over or any other breach in this Lease.

7.06 Remedies Cumulative: The remedies in this Lease granted to Landlord will not be exclusive or mutually exclusive, and Landlord will have such other remedies against Tenant as may be permitted in law or in equity at any time. Any exercise of a right of termination by Landlord will not be construed to eliminate any right of Landlord to damages on account of any default of Tenant.

7.07 Waiver: No delay or omission of Landlord to exercise any right or power arising from any default will impair any such right or power or will be construed to be a waiver of any such default or an acquiescence under this Lease. No waiver of any breach of any of the covenants of this Lease will be held to be a waiver of any other breach or waiver, acquiescence in or consent to any further or subsequent breach of the same covenant. The rights in this Lease given to receive, collect or sue for any rent, monies or payments or to enforce the terms, provisions and conditions of this Lease, or to prevent the breach or non-observance thereof, or to exercise any right or remedy in this Lease, will not in any way affect the right or power of Landlord to declare the term ended and to terminate this Lease because of any default in or breach of any of the covenants, provisions or conditions of this Lease.

7.08 Accord and Satisfaction: No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent in this Lease stipulated will be deemed to be other than on account of the earliest stipulated rent, nor will any endorsement or statement on any check or any letter accompanying any check

or payment as rent be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided for in this Lease.

7.09 Right to Perform for Tenant: If Tenant should fail to perform any of its obligations under the provisions of this Lease, Landlord, at its option, may (but will not be required to) do the same or cause the same to be done. In addition to any and all other rights and remedies of Landlord, the cost incurred by Landlord in connection with such performance by Landlord will be an additional charge due from Tenant to Landlord, together with interest thereon at the maximum rate permitted by law in the state in which the Premises are located on the next rent date after such expenditure or, if there is no maximum rate permitted by law, at 15% per annum.

7.10 Condemnation: If the entire Premises are condemned under eminent domain, or acquired in lieu of condemnation, for any public or quasi-public use or purpose, all rentals and taxes or other charges will be paid to that date, and Tenant will have the right to make a claim for the value of its leasehold estate. Tenant will, also, have the right to claim and recover such compensation as may be separately awarded for any and all damage to Tenant's business by reason of the condemnation and for any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, equipment and other personal property. Tenant specifically waives and releases any claim it may have, however, for the value of the building, fixtures and other improvements on the Premises whether or not installed or paid for by Tenant. Tenant further agrees to subordinate any claim it may have to Landlord's claim for the value of the improvements.

If only a part of the Premises is taken or condemned and Landlord determines that the operation of a McDonald's Restaurant on the Premises is no longer economically feasible or desirable, Landlord may at any time, either prior to or within a period of sixty (60) days after the date when possession of the Premises will be required by the condemning authority, elect to terminate this Lease. If Landlord fails to exercise its option to terminate this Lease or will not have any such option, Landlord will (1) with reasonable promptness, make necessary repairs to and alterations of the improvements on the Premises for the purpose of restoring it to substantially the same use as that which was in effect immediately prior to such taking, to the extent that may be necessary by the condemnation; and (2) be entitled to the entire award for such partial taking. If Landlord does not elect to terminate this Lease, Tenant's Basic Monthly Rent will be reduced by a fraction, the numerator of which will be the total condemnation award or settlement and the denominator of which will be the fair market value of the Premises, prior to the taking, as determined by an independent appraiser selected by the Landlord.

7.11 Subordination and Non-Disturbance: This Lease and all of Tenant's rights, title and interest under the Lease will be subject, subordinated and inferior to the lien of any and all mortgages and to the rights of all parties under any sale and leaseback of the Premises and to any and all terms, conditions, provisions, extensions, renewals or modifications of any such mortgage or mortgages or sale and leaseback which Landlord or any grantee of Landlord (collectively hereafter called "Fee Owner") has or may place upon the Premises and the improvements thereon, in the same manner and to the same extent as if this Lease had been executed subsequent to the execution, delivery and recording of such mortgage or of the deed and lease under the sale and leaseback. This provision is intended to include the right of any grantee or Landlord under a sale and leaseback to further encumber the property with one or more mortgages, all of which are declared to be superior to the interest of Tenant in this Lease.

If a mortgagee or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in such mortgage, or in the event of the default under the Lease related to a sale and leaseback of the Premises, Tenant's right of possession will not be disturbed provided (a) Tenant is not then in default under this Lease and (b) Tenant attorns to such title holder. Tenant agrees that upon a mortgage foreclosure it will attorn to any mortgagee or assignee or any purchaser at the foreclosure sale (collectively called "Purchaser") as its Landlord and in the case of a default under the terms of the lease

used in a sale and leaseback, it will attorn to the Fee Owner of the Premises as its new Landlord and, in either event, this Lease will continue in full force and effect as a direct Lease between Tenant and such party under all of the terms of this Lease. If there is a foreclosure of a mortgage placed on the property by a grantee under a sale and leaseback, such attornment will be required only if, at the time of such foreclosure, the Lease used in the sale and leaseback is also in default.

The subordination of this Lease to any mortgagee of Fee Owner provided for in this Lease or to any Lease under a sale and leaseback arrangement will be automatic and self-operative, and no special instrument of subordination will be necessary. Without limiting such automatic and self-operative subordinations, however, Tenant will, on demand, at any time or times, execute, acknowledge and deliver to Fee Owner, without expense to Fee Owner, any and all instruments that may be necessary or proper to evidence the subordination of this Lease and all rights in this Lease to the lien of any such mortgage, or to any such lease under a sale and leaseback arrangement. If Tenant fails, at any time, to execute, acknowledge and deliver any such subordination instrument within five (5) days after receipt of the notice, in addition to any other remedies available, Landlord may execute, acknowledge and deliver the same as the attorney-in-fact on Tenant's behalf; and Tenant hereby irrevocably makes, constitutes and appoints Landlord, its successors and assigns, such attorney-in-fact for that purpose.

ARTICLE 8 MISCELLANEOUS

8.01 No Agency Created: Tenant will have no authority, express or implied, to act as agent of Landlord or any of its affiliates for any purpose. Tenant is, and will remain, an independent contractor responsible for all obligations and liabilities of, and for all loss or damage to, the Premises, including any personal property, equipment, fixtures or real property connected with them and for all claims or demands based on damage or destruction of property or based on injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of the McDonald's Restaurant located on the Premises.

8.02 Recording of Lease: Tenant will not record this Lease without the written consent of Landlord. However, upon the request of either party, the other party will join the execution of a memorandum or a so-called "short-form" of this Lease for the purpose of recordation. The memorandum or short form of this Lease will describe the parties, the Premises and the term of this Lease and will incorporate this Lease by reference. The party requesting execution of the memorandum will bear all costs for recording it.

8.03 Force Majeure: Whenever a period of time is provided in this Lease for either party to do or perform any act or thing, except the payment of monies, neither party will be liable for any delays due to strikes, lockouts, casualties, acts of God, war, governmental regulation or control or other causes beyond the reasonable control of the parties, and in any event the time period for the performance of an obligation in this Lease will be extended for the amount of time of the delay. This clause will not apply to, or result in, an extension of the term of this Lease.

8.04 Paragraph Headings: Headings in this Lease are for convenience only and are not to be construed as part of this Lease and will not be construed as defining or limiting in any way the scope or intent of the provisions of this Lease.

8.05 Invalidity of a Provision: If any term or provision of this Lease will to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease will not be affected, but each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law. If any material term of this Lease is stricken or declared invalid, Landlord reserves the right to terminate this Lease at its sole option.

8.06 Law Governing: The terms and provisions of this Lease will be governed by the laws of the State of Illinois.

2 3 3 2 0 3 0 0 1 0 1

8.07 Entire Agreement: This Lease and the Franchise Agreement will be deemed to include the entire agreement between the parties, and it is agreed that neither Landlord nor anyone acting in its behalf has made any statement, promise or agreement or taken upon itself any engagement whatever, verbally or in writing, in conflict with the terms of this Lease, or that in any way modifies, varies, alters, enlarges, or invalidates any of its provisions, or extends the term of this Lease, and that no obligations of Landlord will be implied in addition to the obligations expressed in this Lease. This agreement cannot be changed orally but only by an agreement in writing signed by Landlord and Tenant.

8.08 Parties Bound: The terms of this Lease will extend to and be binding upon the administrators, executors, heirs, assigns and successors of the parties, subject to the terms of Article 4.06.

8.09 Notices or Demands: All notices to or demands upon Landlord or Tenant given under any of the provisions of this Lease will be in writing. Any notices or demands from Landlord to Tenant will be deemed to have been duly and sufficiently given if a copy has been delivered personally or mailed by United States registered or certified mail in an envelope properly stamped and addressed to Tenant at the address of the Premises. Any notices or demands from Tenant to Landlord will be deemed to have been duly and sufficiently given if mailed by registered or certified mail in an envelope properly stamped and addressed to Landlord at McDonald's Plaza, Oak Brook, Illinois 60521, Attention: Director, Real Estate Legal Department. Mailed notices shall be deemed received three (3) business days after being deposited in the U.S. Mail. Either party, by notice, may change the address to which notice will be sent, but all notices mailed to Tenant at the address of the restaurant on the Premises will be deemed sufficient.

To indicate their consent to this Operator's Lease the parties, or their authorized representatives or officers, have signed this document on the date indicated.

TENANT: Fredric E. Beatty
and Carolyn S. Beatty

Fredric E. Beatty
Fredric E. Beatty

Carolyn S. Beatty
Carolyn S. Beatty

LANDLORD:

By: _____

Joseph R. Thomas
Director of Real Estate/Legal



Date signed: April 9, 1993

Location code: 37-1074

Prepared by: MCA
(initial)

Date signed: May 15, 1993

37-1074
OL-WHOLE
(12-92)

9 27-0.0 0 0 0 0 0 1

ALL that certain parcel of land situate in Sandy Township, Clearfield County, Commonwealth of Pennsylvania being bounded and described as follows:

BEGINNING at a point on the centerline of Old State Route 0255 said point being located North 74 degrees 30 minutes 48 seconds West a distance of 75.15 feet from the southeast corner of land now or formerly Wal-Mart Stores, Inc.; thence along the centerline of Old State Route 0255 North 74 degrees 30 minutes 48 seconds West a distance of 156.10 feet to a point; thence through said right of way North 15 degrees 29 minutes 12 seconds East a distance of 25.00 feet to a point on the northerly right of way line of Old State Route 0255; thence through land now or formerly Wal-Mart Stores, Inc. North 19 degrees 19 minutes 52 seconds East a distance of 278.64 feet to a point; thence continuing through land now or formerly Wal-Mart Stores, Inc. South 70 degrees 40 minutes 08 seconds East a distance of 115.24 feet to a point; thence by the arc of a circle curving to the right having radius of 49.50 feet for an arc distance of 45.74 feet to a point; thence South 19 degrees 19 minutes 52 seconds West a distance of 233.54 feet to a point on the northerly right of way line of Old State Route 0255; thence through said right of way line South 15 degrees 29 minutes 12 seconds West a distance of 40.00 feet to a point at the place of beginning.

CONTAINING 46,006.837 square feet or 1.056 acres.

OUTLOT NO. 1 RECORDED ON APERTURE CARD 984; 2ND. JUNE, 1992.

THIS description is in accordance with a survey by John Robert Gales, Registered Surveyor, J.R. Gales and Associates, Inc., dated August 11, 1992 and last revised on December 16, 1992.

TOGETHER with those two certain access easements as set forth in that certain Access Easement Agreement between Wal-Mart Stores, Inc. and McDonald's Corporation, d/b/a Delaware McDonald's Corporation dated December 24, 1992 and recorded December 31, 1992.

9 3 0 9 0 8 0 0 1 0 1

LOCATION CODE: 37/1074

RENT SCHEDULE

For the term of this Lease, the Basic Rent will be \$8,625.00 per month,
plus Percentage Rent of 10% of Monthly Gross Sales over \$86,250.00.

SCHEDULE B

9 3 0 9 0 8 0 0 1 0 1

ACCESS EASEMENT

THIS ACCESS EASEMENT is entered into as of the 24th day of December, 1992, by and between WAL-MART STORES, INC., a Delaware corporation whose address is 701 S. Walton Boulevard, Attn: Property Development, Bentonville, Arkansas 72716 ("Wal-Mart"); and McDONALD'S CORPORATION, dba DELAWARE McDONALD'S CORPORATION whose address is P.O. Box 66207, AMF O'Hare, Chicago, IL 60666 ("Grantee").

WITNESSETH:

WHEREAS, Wal-Mart is the owner of that certain tract or parcel of land containing 19.0 acres, more or less, situated in the Township of Sandy County of CLEARFIELD, State of PENNSYLVANIA, identified in part as Tract 1 on the site plan attached hereto as Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Grantee will be by the time this instrument is recorded the owner of that certain 1.0 acre tract or parcel of land in the same township, county, and state, which tract lies adjacent to Tract 1 and is identified as Tract 2 on Exhibit A and more fully described on Exhibit "B" attached hereto and made a part hereof, which tract Wal-Mart is current owner of and intends to convey fee simple title to Grantee by a warranty deed; and

WHEREAS, Grantee has requested from Wal-Mart, and Wal-Mart is desirous of granting to Grantee, nonexclusive easements for pedestrian and vehicular ingress and egress over and across a portion of Tract 1 and the location of directional signage, identified as the Access Area and Additional Access Area on Exhibit A and more fully described on Exhibit "C" attached hereto and made a part hereof ("Access Area" and "Additional Access Area");

NOW THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, Wal-Mart does hereby grant to Grantee a non-exclusive easement for vehicular and pedestrian ingress and egress over and across the Access Area and Additional Access Area so as to allow vehicular or pedestrian traffic access to and from Tract 2 and State Route

Copy to Operator

EXHIBIT

B

1 that french fryer in use?

2 A. I don't know. I don't know how
3 long it was in use.

4 Q. Does McDonald's, Inc., the
5 parent corporation, provide you with
6 guidelines in which to run your
7 business?

8 ATTORNEY LEE:

9 Just note an objection.
10 It's McDonald's Corporation.
11 You can answer.

12 A. Well, not --- I have to perform
13 to their standards as far as preparing
14 product, what I can sell and following
15 their procedures, guidelines, yes. But
16 they don't tell me how to run my
17 business.

18 BY ATTORNEY MONTGOMERY:

19 Q. Does McDonald's reserve the
20 right to come onto your premises and
21 inspect your books?

22 ATTORNEY LEE:

23 Objection to the form of
24 the question. If you understand
25 it, you can answer.

30

1 A. When you say the books, I don't
2 know what you mean by the books.

3 BY ATTORNEY MONTGOMERY:

4 Q. Well, before you told me that
5 the service fees were a percentage of
6 your gross ---

7 A. Sales.

8 Q. --- gross sales. Would
9 McDonald's reserve the right to make
10 sure you were paying the proper service
11 fees?

12 A. Yes.

13 Q. Okay. Is McDonald's able to
14 come onto your premises to inspect that
15 you were operating your restaurant in
16 accordance with the guidelines they
17 gave you?

18 A. Yes.

19 Q. Does McDonald's provide you with
20 guidelines to follow in the case of
21 someone being injured at your store?

22 ATTORNEY LEE:

23 I'm sorry. I just lost
24 it. Can you read that back,
25 please?

31

1 COURT REPORTER READS BACK PREVIOUS
2 QUESTION

3 ATTORNEY LEE:

4 You can answer.

5 A. No..

6 BY ATTORNEY MONTGOMERY:

7 Q. Does McDonald's provide you with
8 guidelines to follow regarding
9 inspection of your store's equipment?

10 ATTORNEY LEE:

11 Object to the form of the
12 question. Can you be more
13 specific in terms of ---?

14 BY ATTORNEY MONTGOMERY:

15 Q. Do you make regular inspections
16 of the equipment at your store?

17 ATTORNEY LEE:

18 And I'm going to just
19 object. If you could be more
20 specific as to what standpoint.
21 In terms of physically how they
22 look, calibration, you know, the
23 right temperature?

24 BY ATTORNEY MONTGOMERY:

25 Q. Just to ensure that the

32

1 equipment is functioning properly.

2 A. Not a formal inspection, no.

3 Q. Okay. Do you have a process by
4 which you would inspect a store?

5 A. As far as what?

6 Q. Well, your own policy or
7 procedure. For instance, every six
8 months you'll have a mechanic come and
9 check to make sure everything is
10 functioning properly.

11 ATTORNEY LEE:

12 In terms of the equipment

13 ---

14 ATTORNEY MONTGOMERY:

15 Yes.

16 ATTORNEY LEE:

17 --- in all your

18 questions.

19 A. No.

20 BY ATTORNEY MONTGOMERY:

21 Q. Has McDonald's --- do they ever
22 send a representative to your store to
23 check your equipment?

24 A. No.

25 Q. Has McDonald's ever come to your

33

1 franchise for an inspection?

2 ATTORNEY LEE:

3 Object to the form of the
4 question. You can answer.

5 A. The company has a restaurant
6 improvement process, and they come
7 three times a year, one announced and
8 two unannounced, to inspect the
9 operation.

10 BY ATTORNEY MONTGOMERY:

11 Q. If a piece of your equipment
12 were to break, how would you go about
13 repairing it?

14 A. I'd either hire an outside
15 repair service or fix it in house by my
16 own people depending upon the severity
17 of the problem.

18 Q. Would you have to seek approval
19 from McDonald's on what service to hire
20 in order to fix it?

21 A. No.

22 Q. All right. We're going to go to
23 the actual incident in question. Just
24 bear with me for one second.

25 OFF RECORD DISCUSSION

1 company or ---?

2 A. Insurance company.

3 BY ATTORNEY MONTGOMERY:

4 Q. Whose insurance company?

5 A. My insurance company.

6 Q. Redirecting your attention to
7 page five of the franchise
8 agreement, ---.

9 ATTORNEY LEE:

10 Which exhibit?

11 ATTORNEY MONTGOMERY:

12 Exhibit One or A.

13 BY ATTORNEY MONTGOMERY:

14 Q. With regard to --- before the
15 document goes into A and B under 12,
16 what does the paragraph say right
17 before that, McDonald's shall have the
18 right ---?

19 A. To inspect the restaurant at
20 reasonable time to ensure the
21 licensee's operation ---

22 ATTORNEY LEE:

23 Slow down.

24 A. --- is in compliance with the
25 standards and policies of the

1 McDonald's system.

2 BY ATTORNEY MONTGOMERY:

3 Q. Continue.

4 A. Licensee shall comply with the
5 entire McDonald's system, including but
6 not limited to the following.

7 Q. And then it goes on to --- what
8 does it say in subparagraph (b)?

9 A. Purchase kitchen fixtures,
10 lighting and other equipment, seating
11 and signs in accordance with equipment
12 specifications and layout initially
13 designed by McDonald's and promptly,
14 after notice from McDonald's that the
15 restaurant/premises are ready for
16 occupancy, cause the installation
17 thereof.

18 ATTORNEY MONTGOMERY:

19 That's all I have.

20 ATTORNEY LEE:

21 Just a couple of

22 follow-ups.

23 RE-EXAMINATION

24 BY ATTORNEY LEE:

25 Q. Mr. Beatty, does the fact that



1 A. I was working when the incident
2 report was filled out.

3 Q. Okay. All right. In your
4 experience at McDonald's, how long do
5 french fryers usually last before they
6 need to be replaced?

7 A. I don't recall. I don't have an
8 answer to that.

9 Q. Okay. Do representatives of
10 McDonald's ever visit your store?

11 A. Yes.

12 Q. For what different reasons would
13 they visit?

14 A. For a full operations review or
15 a short operations review.

16 Q. And what is a full operations
17 review?

18 A. They come in and they check
19 holding times, temperatures, equipment
20 calibrations, service steps, quality of
21 food.

22 Q. Do they ever inspect the
23 equipment you're using?

24 A. No.

25 Q. And what was the other type

1 of ---?

2 A. A short operations review.

3 Q. What does the short operations
4 review review?

5 A. It's from a customer's point of
6 view. They come in and it's a shorter
7 visit. It doesn't go into as much
8 depth, and they check your service and
9 your quality from a customer's point of
10 view.

11 Q. Do they then provide you with a
12 report on how you did?

13 A. Yes.

14 Q. And how do they generally score
15 you? I mean, do they give you, you
16 know, a percentage or do they give you
17 an A or a B?

18 A. We're scored by percentage.

19 Q. Were both of those --- was both
20 the quality and an operations check and
21 a short operations check performed in
22 2003?

23 ATTORNEY LEE:

24 Object to the form of the
25 question. If you understand,

1 you can answer.

2 A. No.

3 BY ATTORNEY MONTGOMERY:

4 Q. No ---?

5 A. No, I don't understand your
6 question.

7 Q. Okay. You said that they come
8 and they do what, a short operation?

9 A. They do a short operations
10 review and a full operations review.

11 Q. Was a short operations review
12 done in 2003?

13 A. I'm sure at some point in time.

14 Q. Okay. And a quality operations
15 review was done as well?

16 A. We don't have a quality
17 operations review. We have a full
18 operations review.

19 Q. Full operations review. Was a
20 full operations review conducted?

21 A. I don't recall, because it runs
22 in an 18-month cycle.

23 Q. Do you remember what score you
24 received on the short operations
25 review?

1 A. No, I don't.

2 Q. What would happen if you
3 received --- I mean, what is considered
4 a bad score on a short operations
5 review? Is there a minimum score you
6 need to keep in order to keep running
7 the restaurant?

8 A. No.

9 ATTORNEY LEE:

10 Object to the form of the
11 question.

12 ATTORNEY MONTGOMERY:

13 Let me re-ask it.

14 BY ATTORNEY MONTGOMERY:

15 A. Is there a minimum score you
16 need to achieve on the short operations
17 review in order to be in compliance
18 with the McDonald's system?

19 A. Yes.

20 Q. Okay. What is that score?

21 A. An 80 percent.

22 Q. How about what's the minimum
23 score on the full operations review?

24 A. The same.

25 Q. Has the DuBois McDonald's ever

1 been below the 80 percent in either of
2 those two reviews?

3 A. What do you mean by ever? In
4 the existence of it?

5 Q. Yes.

6 A. I don't recall.

7 Q. Do you keep a record of those
8 operation reviews at the McDonald's?

9 A. They're at the office.

10 Q. And where is the office located?

11 A. 112 Dixon Avenue.

12 Q. Did you ever report the incident
13 directly to McDonald's Corporation?

14 A. No.

15 Q. So you reported the incident
16 directly to the insurance company?

17 A. Yes.

18 Q. Do you know what that insurance
19 company was?

20 A. No.

21 Q. Was that insurance company the
22 insurance company that's now insuring?

23 A. I don't know.

24 Q. Okay. Who performs the
25 inspections, the calibration, the oil

1 Q. Okay. Do you remember, did you
2 tell him that you weren't going to
3 argue about the liability in this
4 situation?

5 A. I don't recall that either.

6 Q. Okay. Does McDonald's have to
7 provide you with notice before they
8 come in and inspect your store?

9 A. On one time they give notice.
10 On the other times they don't.

11 Q. You said on one time they give
12 notice. On the other ---.

13 A. On the FOR they tell you they're
14 coming in. On the SORs, they're
15 unannounced.

16 Q. So is there more than one SOR?

17 A. Two.

18 Q. There's two. Okay. And what
19 would happen if you received a score
20 lower than 80 percent on either of
21 those reviews?

22 A. What do you mean what would
23 happen?

24 Q. What happens? I mean, they
25 obviously give you a score for a

1 reason. And if you received a score
2 lower than the minimum requirement,
3 what action would McDonald's
4 Corporation take?

5 ATTORNEY LEE:

6 If you know.

7 A. I don't know.

8 BY ATTORNEY MONTGOMERY:

9 Q. I mean, would there be some sort
10 of action?

11 ATTORNEY LEE:

12 If you know.

13 A. I don't know.

14 BY ATTORNEY MONTGOMERY:

15 Q. Is the name Beatty Restaurant
16 Enterprises visible on your McDonald's
17 anywhere?

18 A. On our licenses.

19 Q. And where are the licenses
20 located?

21 A. Posted inside the door.

22 Q. Inside the main entrance?

23 A. Uh-huh (yes), on the wall.

24 Q. Does McDonald's require you to
25 do that?

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

vs.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT
ENTERPRISES, INC. t/d/b/a
MCDONALD'S,

Defendants.

CIVIL DIVISION

No.: 2004-1053-CD

**RESPONSE TO MOTION FOR
SUMMARY JUDGMENT**

Filed on Behalf of Plaintiffs

Counsel of Record for this Party

TIMOTHY MONTGOMERY,
ESQUIRE
PA I.D. #: 94179

Hal K. Waldman & Associates
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

JURY TRIAL DEMANDED

FILED *no cc*
m/10:41/64
JAN 11 2007 *GW*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No.: 2004-1053-CD
Plaintiffs,)	
)	
vs.)	
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
Defendants.)	

RESPONSE TO MOTION FOR SUMMARY JUDGMENT

AND NOW, come the Plaintiffs Peter Nakoski and Katherine Nakoski, husband and wife, by and through their counsel, Hal K. Waldman & Associates, and files this response to Defendant's Motion for Summary Judgment and in support thereof state as follows.

1. Defendant McDonald's Corporation's Motion for Summary

Judgment filed on November 3, 2006, is premature as it was filed before the relevant pleadings were closed. Defendant McDonald's Corporation had not answered Plaintiff's Complaint at the time Defendant moved this honorable Court for Summary Judgment. In lieu of sending a ten notice notifying Defense Counsel of this error, Plaintiff contacted Defendant via telephone alerting Defendant to this error. Defendant subsequently filed an Answer and New Matter to Plaintiff's Complaint which was received by Plaintiff on January 8, 2007 over two months after the filing of the Motion for Summary Judgment.

Pa.R.C.P. 1035.2 states:

After the **relevant pleadings are closed**, but within such time as to not unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

2. Plaintiff asserts that pursuant to Pa.R.C.P. 1035.2 Defendant's Motion for Summary Judgment should be denied on the following bases:

a. Defendant filed its Motion for Summary Judgment before the relevant pleadings were closed.

b. The relevant pleadings remain open as Plaintiff has not been afforded an opportunity to respond to Defendant's Answer and New Matter pursuant to Pa R.C.P. 1026 (a), which states, every pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading...

3. Plaintiff further requests that the Motion for Summary Judgment be denied pursuant to Pa.R.C.P. 1035.2 (1) which states:

After the **relevant pleadings are closed**, but within such time as to not unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause or defense which could be established by **additional discovery** or expert report, or

Plaintiff believes a genuine issue of material fact that McDonald's does control Beatty Restaurant Enterprises can be established through additional discovery. Plaintiff asserts this argument is especially compelling in light of the fact that Plaintiff's have received no discovery relative to McDonald's Corporation's

defense of this case with the exception of an affidavit. Plaintiff has served interrogatories on Defendant McDonald's counsel of record which have not been answered. Further, Plaintiff has attempted to depose a corporate designee of McDonald's, and pursuant to this Court's Temporary Protective Order has been denied this opportunity.

4. Plaintiff further requests that the Motion for Summary Judgment be denied based upon Pa.R.C.P. 1035.2 (2) which states in pertinent part:

After the **relevant pleadings are closed**, but within such time as to not unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(2) if, after the **completion** of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

5. Plaintiff contends that discovery as to McDonald's Corporation has not been completed as required under the rules of civil procedure. Plaintiff has served written interrogatories on McDonald's Counsel of record and received no response. Plaintiff has also requested to take a deposition of a corporate designee which has been denied. In fact, Plaintiff has received only an affidavit from McDonald's Corporation concerning McDonald's defense of this case. Therefore the discovery necessary and relevant to defend a Motion for Summary Judgment has not been completed and said Motion is premature.

6. Defendant's have premised their Motion for Summary Judgment entirely on an affidavit submitted by managing counsel stating that McDonald's does not own, operate, maintain, or control the Beatty Restaurant Enterprises McDonald's; Beatty Restaurant Enterprises answers to interrogatories that Beatty Restaurant Enterprises McDonald's owns, operates, maintains, and controls the Beatty Restaurant Enterprises McDonald's; and the Franchise agreement.

7. Plaintiff asserts that a genuine issue of material fact exists as to whether McDonald's Corporation controls the Beatty Enterprise McDonald's.

8. Said Franchise Agreement in paragraph 1 (c) on page 1, which is attached to this motion as exhibit A sets forth the following:

(c) The foundation of the McDonald's System and the essence of this Franchise is the **adherence** by Licensee to standards and policies of McDonald's providing for the uniform operation of all McDonald's Restaurants within the McDonald's System including but not limited to, serving only **designated** food and beverage products; the use of only **prescribed equipment** and building layout and designs; **strict adherence** to designated food and beverage specifications and to McDonald's prescribed standards of Quality, Service, and Cleanliness in Licensee's restaurant operation. Compliance by Licensee with the foregoing standards and policies in conjunction with the McDonald's trademarks and service marks provides the basis for the valuable good will and wide family acceptance of the McDonald's system. Moreover, the restaurant business, his accountability for performance of the obligations contained in this Franchise, and his adherence to the tenets of the McDonald's system constitute the essence of the franchise.

Further, paragraph 12 of the franchise agreement states in pertinent part:

12. **Compliance with Entire System.** Licensee acknowledges that every component of the McDonald's system is important to McDonald's and to the operation of the Restaurant as a McDonald's restaurant, including a designated menu of food and beverage products; uniformity of food specifications, preparation methods, quality and appearance; and uniformity of facilities and service.

McDonald's shall have the right to inspect the Restaurant at all reasonable times to ensure that Licensee's operation thereof is in compliance with the standards and policies of the McDonald's system.

Licensee shall comply with the entire McDonald's System, including but not limited to, the following:

(a) Operate the Restaurant in a clean, wholesome manner in compliance with prescribed standards of quality, service, and cleanliness; comply with all business policies, practices and procedures **imposed** by McDonald's; serve at the Restaurant only those food and beverage products now or hereafter **designated** by McDonald's; and **maintain** the building, **equipment**, signage, seating and décor and parking area, in a good, clean, wholesome condition and repair, and well lighted and **in compliance** with **designated standards** as may be prescribed from time to time by McDonalds.

(b) **Purchase kitchen fixtures**, lighting and other equipment, seating, and signs in accordance with the equipment specifications and layout initially designated by McDonald's, and, promptly after notice from McDonald's that the premises are ready for occupancy cause the installation thereof.....
(emphasis supplied).

Paragraph 18 of the Franchise agreement sets forth what occurs if there is a material breach of the agreement.

Material Breach. The parties agree that the happening of any of the following events shall constitute a material breach of this franchise and

violate the essence of Licensee's obligations, and, without prejudice to any of its other rights or remedies at law or in equity, McDonald's at its election, may **terminate** this franchise upon the happening of any of the following events:

(a) Licensee shall **fail to maintain and operate** the restaurant in a good, clean, wholesome manner and **in compliance** with the **standards prescribed by the McDonald's System.....**

(l) Licensee shall deny McDonald's the right to **inspect** the Restaurant at all reasonable times....

9. Based upon the foregoing, Beatty Restaurant Enterprises can only serve designated food products, prepared by equipment that has to be approved, operated and maintained by McDonald's standards with McDonald's reserving the right to inspect to ensure compliance with McDonald's standards at any reasonable time. In the event that an inspection would show Beatty Enterprises has failed to meet McDonald's standards or is out of compliance with the McDonald's system McDonald's shall have the right to terminate the franchise.

10. Plaintiff contends that McDonald's Corporation exhibits a considerable amount of control over Beatty Restaurant Enterprises based upon the terms of the franchise agreement.

11. Plaintiff was further able to develop testimony from Mr. Fred Beatty, the owner/operator of the Beatty Enterprises McDonald's and Ms. Debbie Jern the general manager of the Beatty Enterprises McDonald's raising a genuine disputed issue of material fact as to McDonald's control over the Beatty Restaurant Enterprises McDonald's.

12. Plaintiff elicited testimony from both Mr. Beatty the owner of the Beatty Restaurant Enterprises McDonald's and Debbie Jern, the manager of Beatty Enterprises, indicating that McDonald's has the right to come onto Plaintiff's premises and does so, with and without notice, to inspect whether the franchise is operating in compliance with McDonald's standards or the McDonald's system. See Beatty Depo pp. 29-33, 67-68 and Jern Depo pp. 33-37, 40-41.

13. Mr. Beatty and Ms. Jern both testified that McDonald's has conducted these inspections at the Beatty Enterprises McDonald's and does so several times a year. See Beatty Depo pp. 29-33, 67-68 and Jern Depo pp. 33-37, 40-41.

14. Ms. Jern testified at deposition that McDonald's makes an assessment after these inspections. Ms. Jern further testified that the franchise must achieve a minimum assessment grade of 80%. See Jern Depo pp. 33-37, 40-41.

15. However, despite the admission that McDonald's retains the right to enter upon Beatty Restaurant Premises, neither Mr. Beatty nor Ms. Gern was able to testify as to the consequences of non-compliance with McDonald's standards or McDonald's system and what happens in the event the minimum grade of 80% is not met. See Jern Depo pp. 33-37, 40-41.

16. In support of its Motion for Summary Judgment, McDonald's has relied on Beatty Enterprises' answers to Interrogatories, Beatty Enterprises'

production of the Franchise agreement and an affidavit set forth by McDonald's Corporation.

17. Oral testimony alone, either through testimonial affidavits or depositions of the moving party or the moving party's witness, even if uncontradicted, is generally insufficient to establish the absence of a genuine issue of material fact. See *Nanty-Glo v. American Surety Co.*, 309 Pa. 236, 163 A. 523 (1932); *Penn Center House, Inc. v. Hoffman*, 520 Pa. 171, 553 A.2d 900 (1989).

18. Plaintiff contends that the only evidence to support McDonald's Motion for Summary Judgment set forth by McDonald's is an affidavit and based upon the rule enunciated in *Nanty Glo* this affidavit is insufficient to establish the absence of a genuine issue of material fact particularly with respect to McDonald's Corporation's control of the Beatty Enterprises franchise.

19. Plaintiff premises this assertion on the fact that the affidavit is not supported by the additional evidence set forth by McDonald's. Specifically, the affidavit stating McDonald's does not control the Beatty Restaurant Enterprises McDonald's is directly contradicted by the franchise agreement on its face. Further Mr. Beatty's testimony as a whole also contradicts the affidavit.

20. Plaintiff requests that this honorable Court deny Summary Judgment on the basis that the documents set forth by Defendant's themselves create a dispute as to an genuine issue of material fact.

WHEREFORE, Plaintiffs Peter Nakoski and Katherine Nakoski respectfully request that this Court enter an order denying Defendant McDonald's Corporation's Motion for Summary Judgment.

RESPECTFULLY SUBMITTED:

BY: TAM
Timothy Montgomery, Esq.
PA I.D. 94179

Dominion Tower
Suite 300, 625 Liberty Ave.
Pittsburgh, PA 15222
Attorney for Plaintiff

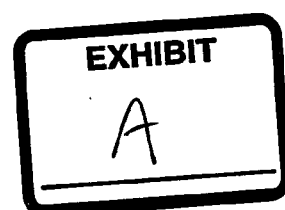
CERTIFICATE OF SERVICE

I, Timothy Montgomery, Esquire, hereby certify that true and correct copies of the foregoing Reply to Motion for Summary Judgment have been served this 10th day of January, 2007 by U.S. first-class mail, postage prepaid, to all counsel of record.

Christopher T. Lee
Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222

Hal K. Waldman & Associates

BY Tim Montgomery
Timothy Montgomery, Esq.
Attorney for Plaintiffs



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE)	
NAKOSKI, his wife,)	
)	
PLAINTIFF,)	
)	
v.	)	NO.
)	
MCDONALD'S CORPORATION and)	
BEATTY RESTAURANT)	
ENTERPRISES, INC. t/d/b/a)	
MCDONALD'S,)	
)	
DEFENDANT.)	

AFFIDAVIT

Personally appeared before the undersigned officer duly authorized by law to administer oaths, Geneace Williams, who, after being sworn, deposes and states that the statements set forth below are true and correct and based upon her personal knowledge gained through file reviews and investigation of McDonald's employees. The statements contained in this Affidavit are true as of this date and were true on May 5, 2003.

1. My name is Geneace Williams. I am employed by McDonald's Corporation as Managing Counsel, and I am authorized to give this affidavit on behalf of McDonald's Corporation.

2. The plaintiff(s) brought a lawsuit against McDonald's Corporation alleging damages for an injury sustained at the McDonald's restaurant located at SR 255 Walmart Plaza, Du Bois, PA 15801, on May 5, 2003.

3. McDonald's Corporation did not own the business specified above.

4. McDonald's Corporation did not operate the business specified above.

5. McDonald's Corporation did not, nor did it have the right to, hire, discharge or discipline employees of the business specified above.

6. McDonald's Corporation did not pay the utilities for the business specified above.

7. McDonald's Corporation did not sell any product at or to the business specified above.

8. McDonald's Corporation did not file a tax return for or on behalf of the business specified above.

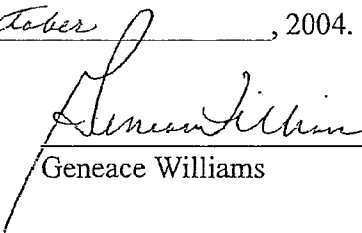
9. McDonald's Corporation did not manufacture, process or prepare any product for sale at the business specified above.

10. McDonald's Corporation did not supply any product, nor did it own or operate any business which supplies product to the business specified above.

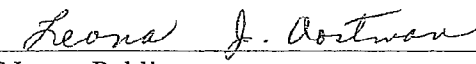
11. McDonald's Corporation did not, nor did it have the right to, control the day-to-day activities necessary to carrying on the business operations of the restaurant specified above.

12. At the time of the alleged incident, the restaurant business specified above was owned and operated by Beatty Restaurant Enterprises, Inc. pursuant to the terms of a franchise agreement dated April 29, 1993.

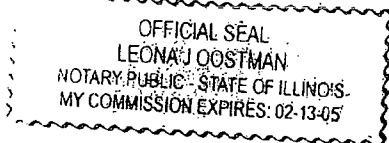
This the 1 day of October, 2004.


Geneace Williams

Sworn to and subscribed before me, this the
1 day of October, 2004


Notary Public

My Commission Expires:



ASSIGNMENT AND CONSENT TO ASSIGNMENT
OF FRANCHISE TO A CORPORATION

Parties: McDonald's Corporation ("McDonald's"), dba
Delaware McDonald's Corporation

Fredric E. Beatty

Carolyn S. Beatty (Collectively
referred to as "Assignor");

Beatty Restaurant Enterprises, Inc. ("Assignee")
a NEW YORK Corporation;

and those shareholders listed on Exhibit A attached hereto and hereby
made a part hereof (collectively referred to as "Shareholders")

Date: MAY 20 1993

WHEREAS, McDonald's or its predecessors granted a franchise to
Assignor, including a License Agreement or Franchise Agreement dated
April 29, 1993, ("License") and an Operator's Lease dated
April 29, 1993, ("Lease"), for the purpose of operating a McDonald's
restaurant located at State Route 255, DUBOIS, PENNSYLVANIA
("Restaurant");

WHEREAS, Assignor desires to transfer the rights in the franchise,
including the License and Lease, ("Franchise") to the Assignee; and

WHEREAS, the parties acknowledge this consent is necessary to insure
the ability of McDonald's to have the type of operators who will operate the
Restaurant business consistent with McDonald's image in the specific community
and in the nation as a whole of having a wholesome atmosphere attractive to children
and families.

NOW, THEREFORE, to induce McDonald's to execute this Assignment
and Consent to Assignment of Franchise to a Corporation (Assignment"), and in
consideration of the premises, promises, covenants, warranties and representations
herein contained, the parties agree as follows:

1. Assignor, in consideration of \$10.00 and other good and valuable
consideration, hereby assigns, transfers and sets over to Assignee all the right, title
and interest of Assignor in and to the Franchise, subject to the terms and conditions
of the Franchise.

2. The effective date of the Assignment shall be upon the opening
date of the restaurant.

3. Assignee hereby covenants and agrees to pay all fees and will
perform all the terms and conditions of the Franchise.

4. Assignor is in no way discharged from personal liability to McDonald's by this Assignment and Assignor specifically agrees to remain personally liable for the full and faithful performance of the agreements and covenants of the Franchise.

5. Assignor, Assignee and Shareholders, jointly and severally, agree, represent and warrant that they shall not make or permit any direct or indirect subsequent assignment or hypothecation of the Franchise, whether voluntarily or by operation of law, without the prior written consent of McDonald's given in accordance with the Franchise and this Assignment.

6. In addition to the above covenants, Assignor and Assignee agree that if any trusts are shareholders of shares of stock of Assignee that:

(a) The beneficial interests in said trusts shall not be assigned without the prior written consent of McDonald's and shall be in accordance with the terms of this Assignment and the License.

(b) Assignor and Assignee warrant that the Trust Agreement supplied to McDonald's is a true and correct copy of the Trust Agreement as it is presently in force. Assignor and Assignee agree not to make any amendments to the Trust Agreement without first giving McDonald's an opportunity to review and approve same.

7. Since the transfer of an interest in the Assignee will in substance constitute an assignment of the Franchise, which Assignor and Assignee have agreed not to transfer except in accordance with certain restrictions, Assignor, Assignee and each Shareholder, jointly and severally, further represent and warrant that: (i) they are the only persons and/or entities with equity interests in Assignee; (ii) the extent of such equity interests are as set forth on Exhibit A attached hereto; (iii) there are no obligations or intentions to issue additional equity interests in Assignee; and (iv) the only persons having a beneficial interest in any trust shareholder are as listed in Exhibit A attached hereto. Assignee and each Shareholder, jointly and severally, agree they shall not make or permit, directly or indirectly, the creation of new or additional equity interests in Assignee or make or permit any subsequent assignment or transfer thereof, or of any issued and outstanding equity interests either voluntarily or by operation of law, including, but not limited to: (a) transfers to successor trustees whether or not such transfer may already be provided for in any Trust Agreement under which any trustee shareholder derives its authority; and (b) any hypothecation or other encumbrance of such equity interest without the written consent of McDonald's first had and obtained in accordance with the provisions of the Franchise and this Assignment. Permanent incapacity of any Shareholder shall be deemed to be a transfer by operation of law for purposes of this Assignment. As used herein the term "equity interest(s)" shall include direct or indirect interests in the equity of the Assignee or the business risk of the Restaurant, including, but not limited to, interests allegedly denominated as debt but which in substance encompass the type of risk-taking interest described herein or any interest in the profits of the Restaurant.

8. McDonald's hereby consents to the assignment of the Franchise to Assignee as required by the Franchise upon the following conditions only:

(a) McDonald's has been induced to execute this Assignment by the agreements, representations and warranties executed and undertaken by Assignor, Assignee and Shareholders as set forth herein.

(b) The granting of this consent is in no way either an approval by McDonald's of the corporate charter or any other documents pertaining to Assignee and insofar as the terms of same may conflict with or contradict the terms of this Assignment said terms are expressly disclaimed.

(c) Assignor and/or Assignee shall legend all issued and outstanding shares of stock of Assignee and future issues of shares of stock of Assignee with the following legend:

This stock may not be pledged, sold, assigned or otherwise transferred, in whole or in part, voluntarily or by operation of law, without the prior written consent of McDonald's Corporation. Any and all transfers are also subject to the terms of the Franchise, including the License Agreement or Franchise Agreement and Operator's Lease, or other applicable agreements, for each McDonald's restaurant operated by Beatty Restaurant Enterprises, Inc.

(d) The granting of this consent to a trust shareholder is not a consent to any proposed future transfers of shares of stock of Assignee to beneficiaries upon the attainment of a certain age or other condition. Any and all future transfers or vesting of shares of stock of Assignee are subject to the terms of paragraph 8 below.

(e) The granting of this consent is in no way an approval of any terms of the Trust Agreement and insofar as said terms may conflict with or contradict the terms of this Assignment, they are expressly disclaimed.

9. The parties agree that in determining whether to grant or to withhold consent to the transfer (whether voluntary or by operation of law) of an interest in Assignee or the Franchise, at any future date, McDonald's shall consider of each prospective transferee, by way of illustration and not limitation, the following: (i) work experience and aptitude; (ii) financial background; (iii) character; (iv) ability to personally devote full time and best efforts to managing the Restaurant; (v) residence in the locality of the Restaurant; (vi) equity interest in the Restaurant; (vii) conflicting interests; (viii) whether or not, in McDonald's sole determination, the transferee intends to be active in the operations of the Restaurant; and (ix) such other criteria and conditions as McDonald's shall then apply in the case of an application for a new franchise to operate a McDonald's restaurant. Upon request to transfer the Franchise or an interest in Assignee, McDonald's consent to such transfer shall also be conditioned each upon such transferee's execution of an agreement by which he personally assumes full and unconditional liability for and agrees to perform from the date of such transfer all obligations, covenants and agreements contained in this Assignment to the same extent as if he had been an original party to this Assignment.

10. Granting consent to this Assignment does not constitute approval of any Shareholder as an approved owner/operator. However, Assignee and each Shareholder hereby covenant and agree to abide by and honor, as if Assignee and each Shareholder were a signatory thereto, those provisions of the License pertaining to the maintenance and protection of the McDonald's System, including, but not limited to, those provisions imposing duties of confidentiality and regulating involvement in other or similar restaurant businesses according to the terms of the License. Assignee and each Shareholder agree that a breach of this covenant shall constitute a breach of the License and entitle McDonald's to enforce all remedies available to it, including, but not limited to, the termination of the License.

11. The parties' respective successors, assigns, heirs and personal representatives shall be bound by and receive the benefits of this Assignment. All obligations, agreements, representations and warranties made by more than one party herein shall be joint and several whether or not so stipulated in the relevant paragraph herein.

12. Assignor, Assignee and Shareholders agree that McDonald's at any time during normal business hours may examine, review and copy any and all of each of their records, books, financial records, tax returns or other documents for the purpose of insuring compliance with the Franchise and this Assignment.

13. Assignor, Assignee and each Shareholder agree that upon breach of the conditions, representations, agreements or warranties contained herein, they and each of them shall be subject, among all other remedies available by law or hereunder, to all relief and remedies granted to McDonald's by the Franchise.

14. Assignor represents and warrants that Assignor has notified any and all of Assignor's lienholders/lenders of this Assignment.

15. All terms and conditions of the Franchise remain in full force and effect, including, but not limited to, the requirement imposed on Fredric E. Beatty to personally devote full time and best efforts to the operation of the Restaurant business.

IN WITNESS WHEREOF, the parties set their hands and seals effective the date set forth above.

McDONALD'S CORPORATION, DBA
DELAWARE McDONALD'S CORPORATION

By: Eugene Stackowiak
Eugene Stackowiak
Assistant Vice President - Franchising

ASSIGNOR:

Fredric E. Beatty
Fredric E. Beatty

Carolyn S. Beatty
Carolyn S. Beatty

ASSIGNEE: Beatty Restaurant
Enterprises, Inc.

By: Fredric E. Beatty
President

SHAREHOLDERS:

Fredric E. Beatty
Fredric E. Beatty
Carolyn S. Beatty
Carolyn S. Beatty

9 3 1 2 1 0 0 0 1 0 1

EXHIBIT A

LISTING OF SHAREHOLDERS OF ASSIGNEE

<u>NAME</u>	<u>(IF TRUST BENEFICIARIES) RELATION TO ASSIGNOR</u>	<u>PERCENTAGE OWNERSHIP</u>
Fredric E. Beatty <i>FB</i>		
Carolyn S. Beatty <i>CSB</i>		100% Joint

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Franchise") made this 29th day of April, 1993, for the operation of a McDonald's restaurant located at State Route 255, DUBOIS, PENNSYLVANIA (the "Restaurant") by and between:

**McDONALD'S CORPORATION, DBA
DELAWARE McDONALD'S CORPORATION**
a Delaware corporation,

("McDonald's")

and

Fredric E. Beatty

Carolyn S. Beatty

("Licensee")

for the purpose of granting the Licensee the rights necessary to operate the Restaurant.

In consideration of the mutual rights and obligations contained herein McDonald's and Licensee agree as follows:

1. *Nature and Scope of Franchise.*

(a) McDonald's has developed and operates a restaurant system ("McDonald's System"). The McDonald's System is a comprehensive system for the ongoing development, operation and maintenance of McDonald's restaurant locations which have been selected and developed by McDonald's for the retailing of a limited menu of uniform and quality food products, emphasizing prompt and courteous service in a clean, wholesome atmosphere which is intended to be attractive to children and families and includes proprietary rights in certain valuable trade names, service marks and trademarks, including the trade names "McDonald's" and "McDonald's Hamburgers," designs and color schemes for restaurant buildings, signs, equipment layouts, formulas and specifications for certain food products, methods of inventory and operation control, bookkeeping and accounting, and manuals covering business practices and policies. The McDonald's System is operated and is advertised widely within the United States of America and in certain foreign countries.

(b) McDonald's holds the right to authorize the adoption and use of the McDonald's System at the Restaurant. The rights granted to the Licensee to operate the Restaurant are set forth in this Franchise, including the Operator's Lease ("Lease") which is attached hereto as Exhibit A, incorporated herein and hereby made a part hereof.

(c) The foundation of the McDonald's System and the essence of this Franchise is the adherence by Licensee to standards and policies of McDonald's providing for the uniform operation of all McDonald's restaurants within the McDonald's System including, but not limited to, serving only designated food and beverage products; the use of only prescribed equipment and building layout and designs; strict adherence to designated food and beverage specifications and to McDonald's prescribed standards of Quality, Service and Cleanliness in Licensee's restaurant operation. Compliance by Licensee with the foregoing standards and policies in conjunction with the McDonald's trademarks and service marks provides the basis for the valuable good will and wide family acceptance of the McDonald's System. Moreover, the establishment and maintenance of a close personal working relationship with McDonald's in the conduct of his McDonald's restaurant business, his accountability for performance of the obligations contained in this Franchise, and his adherence to the tenets of the McDonald's System constitute the essence of this Franchise.

(d) The provisions of this Franchise shall be interpreted to give effect to the intent of the parties stated in this paragraph 1 so that the Restaurant shall be operated in conformity to the McDonald's System through strict adherence to McDonald's standards and policies as they exist now and as they may be from time to time modified.

(e) Licensee acknowledges his understanding of McDonald's basic business policy that McDonald's will grant licenses only to those individuals who live in the locality of their McDonald's restaurant, actually own the entire equity interest in the business of the Restaurant and its profits, and who will work full-time at their McDonald's restaurant business. Licensee represents, warrants, and agrees that he actually owns the complete equity interest in this Franchise and the profits from the operation of the Restaurant, and that he shall maintain such interest during the term of this Franchise except only as otherwise permitted pursuant to the terms and conditions of this Franchise. Licensee agrees to furnish McDonald's with such evidence as McDonald's may request, from time to time, for the purpose of assuring McDonald's that Licensee's interest remains as represented herein.

(f) Licensee agrees to pay to McDonald's all required payments under this Franchise, including, without limitation, the payments set forth in paragraphs 8 and 9 herein and paragraph 3.01 of the Lease. In addition, Licensee shall make a non-interest bearing security deposit in the amount set forth in paragraphs 1.03 and 3.07 of the Lease. All payments hereby required constitute a single financial arrangement between Licensee and McDonald's which, taken as a whole and without regard to any designation or descriptions, reflect the value of the authorization being made available to the Licensee by McDonald's in this Franchise and the services rendered by McDonald's during the term hereof.

2. License Grant and Term.

(a) McDonald's grants to Licensee for the following stated term the right, license, and privilege:

- (i) to adopt and use the McDonald's System at the Restaurant;
- (ii) to advertise to the public that he is a licensee of McDonald's;
- (iii) to adopt and use, but only in connection with the sale of those food and beverage products which have been designated by McDonald's at the Restaurant, the trade names, trademarks and service marks which McDonald's shall designate, from time to time, to be part of the McDonald's System; and
- (iv) to occupy the Restaurant as provided herein.

The rights granted under this Franchise are limited to the Restaurant's location only.

(b) The term of the Franchise shall begin on the opening date of the Restaurant and end twenty (20) years thereafter, but in no event later than April 28, 2014, unless terminated prior thereto pursuant to the provisions hereof.

3. General Services of McDonald's. McDonald's shall advise and consult with Licensee periodically in connection with the operation of the Restaurant and also, upon Licensee's request, at other reasonable times. McDonald's shall communicate to Licensee its know-how, new developments, techniques and improvements in areas of restaurant management, food preparation, and service which are pertinent to the operation of a restaurant using the McDonald's System. The communications shall be accomplished by visits by Field Consultants, printed and filmed reports, seminars, and newsletter mailings. McDonald's shall also make available to Licensee all additional services, facilities, rights and privileges relating to the operation of the Restaurant which McDonald's makes generally available, from time to time, to all its licensees operating McDonald's restaurants.

4. Manuals. McDonald's shall provide Licensee with the business manuals prepared by McDonald's for use by licensees of McDonald's restaurants similar to the Restaurant to be operated by Licensee. The business manuals contain detailed information including: (a) required operations procedures; (b) methods of inventory control; (c) bookkeeping and accounting procedures; (d) business practices and policies; and (e) other management, advertising, and personnel policies. Licensee agrees to promptly adopt and use exclusively the formulas, methods and policies contained in the business manuals, now and as they may be modified by McDonald's from time to time. Licensee acknowledges that McDonald's is the owner of all proprietary rights in and to the McDonald's System and that the information revealed in the business manuals, in their entirety, constitute confidential trade secrets. Without the prior written consent of McDonald's, Licensee shall not disclose the contents of the business manuals to any person, except employees of Licensee for purposes related solely to the operation of the Restaurant, nor shall Licensee reprint or reproduce the manuals in whole or in part for any purpose except in connection with instruction of employees in the operation of Licensee's Restaurant. Such manuals, as modified by McDonald's from time to time, and the policies contained therein, are incorporated in this Franchise by reference.

5. *Advertising.* McDonald's employs both public relations and advertising specialists who formulate and carry out national and local advertising programs for the McDonald's System.

Licensee shall use only advertising and promotional materials and programs provided by McDonald's or approved in advance, in writing, by McDonald's. Neither the approval by McDonald's of Licensee's advertising and promotional material nor the providing of such material by McDonald's to Licensee shall, directly or indirectly, require McDonald's to pay for such advertising or promotion.

Licensee shall expend during each calendar year for advertising and promotion of the Restaurant to the general public an amount which is not less than four percent (4%) of his Gross Sales (as that term is defined in Paragraph 7) for such year. Expenditures by Licensee to national and regional cooperative advertising and promotion of the McDonald's System, or to a group of McDonald's restaurants which includes the Restaurant, shall be a credit against the required minimum expenditures for advertising and promotion to the general public.

6. *Training.* McDonald's shall make available to Licensee the services of Hamburger University, the international training center for the McDonald's System. Licensee acknowledges the importance of quality of business operation among all restaurants in the McDonald's System and agrees to enroll himself and his managers, present and future, at Hamburger University or at such other training center as may be designated by McDonald's from time to time. McDonald's shall bear the cost of maintaining Hamburger University and any other training centers, including the overhead costs of training, staff salaries, materials and all technical training tools and agrees to provide to Licensee both basic and advanced instruction for the operation of a McDonald's System restaurant. Licensee shall pay all traveling, living, compensation or other expenses incurred by Licensee and his employees in connection with attendance at Hamburger University or such other training centers.

7. *Gross Sales.* For the purposes of this Agreement, the term "Gross Sales" shall mean all revenues from sales of the Licensee based upon all business conducted upon or from the Restaurant, whether such sales be evidenced by check, cash, credit, charge account, exchange or otherwise, and shall include, but not be limited to, the amounts received from the sale of goods, wares and merchandise, including sales of food, beverages and tangible property of every kind and nature, promotional or otherwise and for services performed from or at the Restaurant, together with the amount of all orders taken or received at the Restaurant, whether such orders be filled from the Restaurant or elsewhere. Gross Sales shall not include sales of merchandise for which cash has been refunded, provided that such sales shall have previously been included in Gross Sales. There shall be deducted from Gross Sales the price of merchandise returned by customers for exchange, provided that such returned merchandise shall have been previously included in Gross Sales, and provided that the sales price of merchandise delivered to the customer in exchange shall be included in Gross Sales. Gross Sales shall not include the amount of any sales tax imposed by any federal, state, municipal or other governmental authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein, and actually paid by the Licensee to such governmental authority. Each charge or sale upon credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time when the Licensee shall receive payment (whether full or partial) therefor.

8. *Service Fee.* Licensee shall pay a semi-monthly service fee on or before the 1st and 16th day of each month in an amount equal to three and one-half percent (3.5%) of the Gross Sales of the Restaurant for the respective preceding half-month periods immediately ended. Delinquent service fees shall bear simple interest after the respective dates thereof until paid at the highest interest rate allowed by law or if there is no maximum rate permitted by law, at 15% per annum.

9. *Initial Fee.* Licensee acknowledges that: (a) the initial grant of this Franchise constitutes the sole consideration for the payment of an Initial Fee of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) paid by Licensee to McDonald's; and (b) the fee has been earned by McDonald's (except where the construction of the Restaurant has not been completed within one year from the date of the execution and delivery of this Franchise). If the Restaurant has not been constructed or is not ready for occupancy at the time of the execution of this Franchise, McDonald's shall use

its best efforts to expedite the construction and lease of the Restaurant to Licensee. However, McDonald's shall not be liable to Licensee in any manner for any delays in or lack of completion of such construction for any reason. McDonald's shall be under no obligation to enforce performance or to seek other remedies for non-performance of any lease, clause or contract necessary for the construction of the Restaurant and reserves the right, in case construction of the Restaurant should be abandoned, the lease assigned, or other interest in the premises be relinquished, to terminate this Franchise upon reimbursement to Licensee of the Initial Fee. At such time as the Restaurant is completed and ready for occupancy the Initial Fee shall be deemed to be earned. If the Restaurant is not ready for occupancy within one year from the date of this Franchise, Licensee shall have the right to terminate this Franchise and obtain an immediate refund of the Initial Fee upon written request to McDonald's.

10. **Reports.** On or before the 1st and 16th day of each month, Licensee shall render to McDonald's a statement, in such form as McDonald's shall reasonably require from time to time, of all receipts from the operation of the Restaurant for the respective preceding half-month periods immediately ended. On or before the twenty-fifth (25th) day of each month Licensee shall submit to McDonald's an operating statement and a statistical report for the previous month in form satisfactory to McDonald's. Licensee shall keep and preserve full and complete records of Gross Sales for at least three years in a manner and form satisfactory to McDonald's and shall also deliver such additional financial, operating and other information and reports as McDonald's may reasonably request on the forms and in the manner prescribed by McDonald's. Licensee further agrees to submit within ninety (90) days following the close of each fiscal year of his Restaurant's operation, a profit and loss statement covering operations during such fiscal year and a balance sheet taken as of the close of such fiscal year, all prepared in accordance with generally accepted accounting principles. The profit and loss statement and the balance sheet shall, if McDonald's shall request certification, be certified by a certified public accountant. Licensee shall at his expense cause his public accountant and certified public accountant, if any, to consult with McDonald's concerning such statement and balance sheet. The original of each such report required by this paragraph 10 shall be mailed to McDonald's at the address indicated in paragraph 22 herein.

McDonald's shall have the right to inspect and/or audit Licensee's accounts, books, records and tax returns at all reasonable times to insure that Licensee is complying with the terms of the Franchise. If such inspection discloses that Gross Sales actually exceeded the amount reported by Licensee as his Gross Sales by an amount equal to two percent (2%) or more of Gross Sales originally reported to McDonald's, Licensee shall bear the cost of such inspection and audit.

11. **Restrictions.** Licensee agrees and covenants as follows:

(a) During the term of this Franchise, Licensee shall not, without the prior written consent of McDonald's, directly or indirectly, engage in, acquire any financial or beneficial interest (including interests in corporations, partnerships or trusts, unincorporated associations and joint ventures) in, or become a landlord for any restaurant business, which is similar to the Restaurant operated by the Licensee.

(b) Licensee shall not, for a period of 18 months after termination of this Franchise for any reason or the sale of the Restaurant, directly or indirectly, engage in or acquire any financial or beneficial interest (including any interest in corporations, partnerships or trusts, unincorporated associations and joint ventures) in, or become a landlord of any restaurant business which is similar to the Restaurant operated by the Licensee within a ten-mile radius of said Restaurant.

(c) Licensee shall not appropriate, use, or duplicate the McDonald's System, or any portion thereof, for use at any other self-service, carry-out or other similar restaurant business.

(d) Licensee shall not disclose or reveal any portion of the McDonald's System to a non-licensee other than to his Restaurant employees as an incident of their training.

(e) Licensee shall acquire no right to use, or to license the use of, any name, mark or other intellectual property right granted or to be granted herein, except in connection with the operation of the Restaurant.

The restrictions contained in paragraphs 11(a) and (b) herein shall not apply to ownership of less than two percent (2%) of the shares of a company whose shares are listed and traded on a national or regional securities exchange.

12. **Compliance with Entire System.** Licensee acknowledges that every component of the McDonald's System is important to McDonald's and to the operation of the Restaurant as a McDonald's restaurant, including a designated menu of food and beverage products; uniformity of food specifications, preparation methods, quality and appearance; and uniformity of facilities and service.

McDonald's shall have the right to inspect the Restaurant at all reasonable times to ensure that Licensee's operation thereof is in compliance with the standards and policies of the McDonald's System.

Licensee shall comply with the entire McDonald's System, including, but not limited to, the following:

(a) Operate the Restaurant in a clean, wholesome manner in compliance with prescribed standards of Quality, Service, and Cleanliness; comply with all business policies, practices and procedures imposed by McDonald's; serve at the Restaurant only those food and beverage products now or hereafter designated by McDonald's; and maintain the building, equipment, signage, seating and decor and parking area, in a good, clean, wholesome condition and repair, and well lighted and in compliance with designated standards as may be prescribed from time to time by McDonald's;

(b) Purchase kitchen fixtures, lighting and other equipment, seating, and signs in accordance with the equipment specifications and layout initially designated by McDonald's, and, promptly after notice from McDonald's that the Restaurant premises are ready for occupancy, cause the installation thereof;

(c) Keep the Restaurant constructed and equipped in accordance with the building blueprints and equipment layout plans that are standard in the McDonald's System or as such blueprints and plans may be reasonably changed from time to time by McDonald's;

(d) Licensee shall not, without the prior written consent of McDonald's: (i) make any building design conversion, or (ii) make any alterations, conversions, or additions to the building, equipment or parking area;

(e) Make repairs or replacements required because of damage, wear and tear, or in order to maintain the Restaurant building and parking area in good condition and in conformity to blueprints and plans;

(f) Where parking is provided, maintain the parking area for the exclusive use of Restaurant customers;

(g) Operate the Restaurant seven days per week throughout the year and at least during the hours from 7:00 a.m. to 11:00 p.m., or such other hours as may from time to time be prescribed by McDonald's (except when the Restaurant is untenable as a result of fire or other casualty), maintain sufficient supplies of food and paper products, and employ adequate personnel so as to operate the Restaurant at its maximum capacity and efficiency;

(h) Cause all employees of Licensee, while working in the Restaurant, to: (i) wear uniforms of such color, design and other specifications as McDonald's may designate from time to time, (ii) present a neat and clean appearance; and (iii) render competent and courteous service to Restaurant customers;

(i) In the dispensing and sale of food products: (i) use only containers, cartons, bags, napkins and other paper goods and packaging bearing the approved trademarks and which meet the McDonald's System specifications and quality standards which McDonald's may designate from time to time; (ii) use only those flavorings, garnishments and food and beverage ingredients which meet the McDonald's System specifications and quality standards which McDonald's may designate from time to time; and (iii) to employ only those methods of food handling and preparation which McDonald's may designate from time to time;

(j) To make prompt payment in accordance with the terms of invoices rendered to Licensee on his purchase of fixtures, signs, equipment and food and paper supplies;

(k) At his own expense, comply with all federal, state and local laws, ordinances and regulations affecting the operation of the Restaurant.

13. **Best Efforts.** Licensee shall diligently and fully exploit the rights granted in this Franchise by personally devoting full time and best efforts and, in case more than one individual has executed this Franchise as the Licensee, then Fredric E. Beatty shall personally devote full time and best efforts to the operation of the Restaurant. Licensee shall keep free from conflicting enterprises or any other activities which would be detrimental to or interfere with the business of the Restaurant.

14. *Interference with Employment Relations of Others.* During the term of this Franchise, Licensee shall not employ or seek to employ any person who is at the time employed by McDonald's, any of its subsidiaries, or by any person who is at the time operating a McDonald's restaurant or otherwise induce, directly or indirectly, such person to leave such employment. This paragraph 14 shall not be violated if such person has left the employ of any of the foregoing parties for a period in excess of six months.

15. *Assignment.* Without the prior written consent of McDonald's, Licensee's interest in this Franchise shall not be assigned or otherwise transferred in whole or in part (whether voluntarily or by operation of law) directly, indirectly, or contingently, and then only in accordance with the terms of this paragraph 15.

(a) *Death or Permanent Incapacity of Licensee.* Upon the death or permanent incapacity of Licensee, the interest of Licensee in this Franchise may be assigned either pursuant to the terms of sub-paragraph (d) herein or to one or more of the following persons: Licensee's spouse, heirs, or nearest relatives by blood or marriage, subject to the following conditions: (i) If, in the sole discretion of McDonald's, such person shall be capable of conducting the Restaurant business in accordance with the terms and conditions of this Franchise, and (ii) if such person shall also execute an agreement by which he personally assumes full and unconditional liability for and agrees to perform all the terms and conditions of this Franchise to the same extent as the original Licensee. If, in McDonald's sole discretion, such person cannot devote his full time and best efforts to the operation of the Restaurant or lacks the capacity to operate the Restaurant in accordance with this Franchise, McDonald's shall have an option to operate and/or manage the Restaurant for the account of Licensee or of his estate until the deceased or incapacitated Licensee's interest is transferred to another party acceptable to McDonald's in accordance with the terms and conditions of this Agreement. However, in no event shall such McDonald's operation and management of the Restaurant continue for a period in excess of twelve (12) full calendar months without the consent of Licensee or his estate. In the event that McDonald's so operates and/or manages the Restaurant, McDonald's shall make a complete account to and return the net income from such operation to the Licensee or to his estate, less a reasonable management fee and expenses. If the disposition of the Restaurant to a party acceptable to McDonald's has not taken place within twelve (12) months from the date that McDonald's has commenced the operation or management of the Restaurant on behalf of the deceased or incapacitated Licensee, then, in that event McDonald's shall have the option to purchase the Restaurant at fair market value for cash or its common stock at its option.

(b) *Assignment to Licensee's Corporation.* McDonald's shall, upon Licensee's compliance with such requirements as may from time to time be prescribed by McDonald's, including a Stockholders Agreement in the form prescribed by McDonald's, consent to an assignment to a corporation whose shares are wholly owned and controlled by Licensee. The corporate name of the corporation shall not include any of the names or trademarks granted by this Franchise. Any subsequent assignment or transfer, either voluntarily or by operation of law, of all or any part of said shares shall be made in compliance with the terms and conditions set forth in sub-paragraph (a) and (d) herein.

(c) *First Option to Purchase.* Licensee or his representative shall at least 20 days prior to the proposed effective date give McDonald's written notice of intent to sell or otherwise transfer this Franchise pursuant to sub-paragraph (d) of this paragraph 15. The notice shall set forth the name and address of the proposed purchaser and all the terms and conditions of any offer. McDonald's shall have the first option to purchase the Restaurant by giving written notice to Licensee of its intention to purchase on the same terms as the offer within ten (10) days following McDonald's receipt of such notice. However, if McDonald's fails to exercise its option and the Restaurant is not subsequently sold to the proposed purchaser for any reason, McDonald's shall continue to have, upon the same conditions, a first option to purchase the Restaurant upon the terms and conditions of any subsequent offer.

(d) *Other Assignment.* In addition to any assignments or contingent assignments contemplated by the terms of sub-paragraphs (a) and (b) of this paragraph 15, Licensee shall not sell, transfer or assign this Franchise to any person or persons without McDonald's prior written consent. Such consent shall not be arbitrarily withheld.

In determining whether to grant or to withhold such consent, McDonald's shall consider of each prospective transferee, by way of illustration, the following: (i) work experience and aptitude, (ii) financial background,

(iii) character, (iv) ability to personally devote full time and best efforts to managing the Restaurant, (v) residence in the locality of the Restaurant, (vi) equity interest in the Restaurant, (vii) conflicting interests, and (viii) such other criteria and conditions as McDonald's shall then apply in the case of an application for a new license to operate a McDonald's restaurant. McDonald's consent shall also be conditioned each upon such transferee's execution of an agreement by which he personally assumes full and unconditional liability for and agrees to perform from the date of such transfer all obligations, covenants and agreements contained in this Franchise to the same extent as if he had been an original party to this Franchise. Licensee-transferor shall continue to remain personally liable for all affirmative obligations, covenants and agreements contained herein for the full term of this Franchise or for such shorter period as McDonald's may, in its sole discretion, determine. Upon each assignment or other transfer of this Franchise to any person or persons under the terms and conditions of this sub-paragraph 15(d), the percentage service fee charge owing to McDonald's after the date of such assignment or transfer shall be automatically adjusted to the then prevailing percentage service fee charge required under new Franchises issued by McDonald's for similar McDonald's restaurants at the time of such assignment or transfer.

16. *Licensee not an Agent of McDonald's.* Licensee shall have no authority, express or implied, to act as agent of McDonald's or any of its affiliates for any purpose. Licensee is, and shall remain, an independent contractor responsible for all obligations and liabilities of, and for all loss or damage to, the Restaurant and its business, including any personal property, equipment, fixtures or real property connected therewith and for all claims or demands based on damage or destruction of property or based on injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of the Restaurant.

17. *Insurance.* Licensee shall, upon taking possession of the Restaurant, acquire and maintain in effect such insurance with such coverages as may be required by the terms of any lease of the Restaurant premises to McDonald's, and in any event, Licensee shall acquire and maintain in effect not less than the following coverages in the following minimum amounts:

(a) Worker's Compensation insurance prescribed by law in the state in which the Restaurant is located and Employer's Liability Insurance with \$100,000 minimum limit. If the state in which the Restaurant is located allows the option of not carrying Worker's Compensation Insurance, and Licensee chooses to exercise that option, Licensee shall nonetheless carry and maintain other insurance with limits at least equal to those established by the state's Worker's Compensation law or as may be approved by McDonald's.

(b) Comprehensive general liability insurance in a form approved by McDonald's with a combined single limit of \$1,000,000.00 for Bodily Injury and Property Damage, per occurrence.

(c) All such insurance as may be required under the Lease.

All insurance policies required to be carried hereunder shall name McDonald's and any party designated by McDonald's as additional insureds, as their interests may appear in this Agreement. All policies shall be effective on or prior to the date Licensee is given possession of the Restaurant premises for the purpose of installing equipment or opening the Restaurant, whichever occurs first, and evidence of payment of premiums and duplicate copies of policies of the insurance required herein shall be delivered to McDonald's at least thirty (30) days prior to the date that Licensee opens for business and/or thirty (30) days prior to the expiration dates of an existing policy of insurance. All policies of insurance shall include a provision prohibiting cancellations or material changes to the policy thereof until thirty (30) days written notice has been given to McDonald's.

In the event Licensee shall fail to obtain the insurance required herein, McDonald's may, but need not, purchase said insurance, adding the premiums paid to Licensee's monthly rent. (Licensee may authorize McDonald's to purchase and to administer the required minimum insurance on Licensee's behalf. However, McDonald's by placement of the required minimum insurance, assumes no premium expense nor guarantees any losses sustained). McDonald's may relieve itself of all obligations with respect to the administration of such required insurance coverage by giving ten (10) days written notice to Licensee.

All insurance shall be placed with a reputable insurance company licensed to do business in the state in which the Restaurant is located and having a Financial Size Category of XV and Policyholders Rating of "A+" or "A" (Excellent) as assigned by Alfred M. Best and Company, Inc.

18. **Material Breach.** The parties agree that the happening of any of the following events shall constitute a material breach of this Franchise and violate the essence of Licensee's obligations, and, without prejudice to any of its other rights or remedies at law or in equity, McDonald's at its election, may terminate this Franchise upon the happening of any of the following events:

(a) Licensee shall fail to maintain and operate the Restaurant in a good, clean, wholesome manner and in compliance with the standards prescribed by the McDonald's System;

(b) Licensee shall be adjudicated a bankrupt, become insolvent, or a receiver, whether permanent or temporary, for all or substantially all of Licensee's property, shall be appointed by any court, or Licensee shall make a general assignment for the benefit of his creditors, or a voluntary or involuntary petition under any bankruptcy law shall be filed with respect to Licensee and shall not be dismissed within thirty (30) days thereafter;

(c) Any payment owing to McDonald's is not paid within thirty (30) days after the date such payment is due;

(d) Any judgment or judgments aggregating in excess of \$5,000.00 against Licensee or any federal, state or local tax lien in excess of \$5,000.00 against Licensee's property shall remain unsatisfied or unbonded of record in excess of thirty (30) days;

(e) Licensee shall cause, suffer or permit (voluntarily or involuntarily) his right of possession as lessee or sublessee of the premises on which the Restaurant is located to be terminated prematurely for any cause whatever;

(f) Licensee shall acquire any interest in a business in violation of sub-paragraph 11(a);

(g) Licensee shall duplicate the McDonald's System in violation of sub-paragraph 11(c);

(h) Licensee shall make or cause a disclosure of any portion of the McDonald's System in violation of sub-paragraph 11(d) or shall make or cause a disclosure of part of the McDonald's System business manuals;

(i) Licensee shall violate sub-paragraph 11(e) by use of any name, trademark, service mark, or other intellectual property right of McDonald's exceeding the restrictions of said paragraph 11;

(j) Licensee shall knowingly sell food or beverage products other than those designated by McDonald's or which fail to conform to McDonald's System specifications for those products, or which are not prepared in accordance with the methods prescribed by McDonald's, or fail to sell products designated by McDonald's;

(k) Any assignment or other transfer of any interest of the Licensee in this Franchise shall occur in violation of sub-paragraph 15 (d) herein;

(l) Licensee shall deny McDonald's the right to inspect the Restaurant at reasonable times; or

(m) Licensee shall fail to make or make repeated delays in the prompt payment of undisputed invoices from his suppliers or in the remittance of payments as required by this Franchise.

19. **Other Breaches.** If Licensee fails in the performance of any of the terms and conditions of this Franchise (other than performance of the terms and conditions listed in paragraph 18), he shall be guilty of a breach of this Franchise which shall not (except in the case of repeated breaches of the same or of different terms and conditions of the Franchise) constitute grounds for termination of the Franchise. McDonald's shall have the right to seek judicial enforcement of its rights and remedies, including, but not limited to, injunctive relief, damages, or specific performance. Notwithstanding any of the provisions of this paragraph 19, any uncured breach of the terms of this Franchise (whether of paragraph 18 or 19) shall be sufficient reason for McDonald's to withhold approval of its consent to any assignment or transfer of Licensee's interest in the Franchise provided for herein.

20. **Effect of Termination.**

(a) In the event of any material breach of this Franchise, McDonald's shall have an immediate right to enter and take possession of the Restaurant in order to maintain continuous operation of the Restaurant, to provide for orderly change of management and disposition of personal property, and to otherwise protect McDonald's interest.

(b) Upon termination of this Franchise due to any breach or breaches, Licensee shall not, without the prior written consent of McDonald's, remove any furniture, fixtures, signs, equipment or other property or leasehold improvements from the premises either prior to or for a period of thirty (30) days following such termination. McDonald's

shall have the option for thirty (30) days following any such termination to purchase Licensee's furniture, fixtures, signs, equipment, leasehold improvements and other property or any portion thereof for a sum equal to the fair market value of such property. In the event of such a termination, there shall be no payment by McDonald's for intangible assets of Licensee.

(c) Upon termination of this Franchise due to the expiration of its term or as a result of any eminent domain proceedings affecting the premises upon which the Restaurant is situated, Licensee shall not remove any furniture, fixtures, signs, equipment and other property or leasehold improvements within sixty (60) days prior to the date specified for termination or the date specified for takeover by any public authority. McDonald's shall, upon written notice at least thirty (30) days prior to such date of termination of McDonald's intention to purchase said property, have the option to purchase Licensee's furniture, fixtures, signs, equipment and other chattels or any portion thereof for a sum equal to the fair market value of such physical property. In the event of such a termination, there shall be no payment by McDonald's for intangible assets of Licensee.

(d) Upon termination or expiration of the Franchise, Licensee shall forthwith return to McDonald's the business manuals furnished to him, together with all other material containing trade secrets, operating instructions or business practices; discontinue the use of the McDonald's System and its associated trade names, service marks and trademarks or the use of any and all signs and printed goods bearing such names and marks, or any reference to them; not disclose, reveal or publish all or any portion of the McDonald's System; and Licensee shall not thereafter use any trade name, service mark or trademark similar to or likely to be confused with those of McDonald's.

21. *Effect of Waivers.* No waiver by McDonald's or any breach or a series of breaches of this Franchise shall constitute a waiver of any subsequent breach or waiver of the terms of this Franchise.

22. *Notices.* Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, addressed to Licensee at the Restaurant or to McDonald's at ONE McDONALD'S PLAZA, OAK BROOK, ILLINOIS 60521. Either party, by a similar written notice, may change the address to which notices shall be sent.

23. *Cost of Enforcement.* If McDonald's institutes any action at law or in equity against Licensee to secure or protect McDonald's rights under or to enforce the terms of this Franchise, in addition to any judgment entered in its favor, McDonald's shall be entitled to recover such reasonable attorneys' fees as may be allowed by the court together with court costs and expenses of litigation.

24. *Indemnification.* If McDonald's shall be subject to any claim, demand or penalty or become a party to any suit or other judicial or administrative proceeding by reason of any claimed act or omission by Licensee, his employees or agents, or by reason of any act occurring on the Restaurant premises, or by reason of an omission with respect to the business or operation of the Restaurant, Licensee shall indemnify and hold McDonald's harmless against all judgments, settlements, penalties, and expenses, including attorneys' fees, court costs and other expenses of litigation or administrative proceeding, incurred by or imposed on McDonald's in connection with the investigation or defense relating to such claim or litigation or administrative proceeding and, at the election of McDonald's, Licensee shall also defend McDonald's.

25. *Construction and Severability.* All references in this Franchise to the singular shall include the plural where applicable, and all references to the masculine shall include the feminine and vice-versa. Either reference shall include the feminine. If any part of this Franchise for any reason shall be declared invalid, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect. In the event that any material provision of this Franchise shall be stricken or declared invalid, McDonald's reserves the right to terminate this Franchise.

26. *Scope and Modification of Franchise.* This Franchise (including Exhibit A and any riders hereto) constitutes the entire agreement between the parties and supersedes all prior and contemporaneous, oral or written, agreements or understandings of the parties. No interpretation, change, termination or waiver of any of the provisions hereof shall be binding upon McDonald's unless in writing signed by an officer of McDonald's or its Licensing Director, and which is specifically identified as an amendment hereto. No modification, waiver, termination, rescission, discharge or cancellation of this Franchise shall affect the right of any party hereto to enforce any claim or right hereunder, whether or not liquidated, which occurred prior to the date of such modification, waiver, termination, rescission, discharge or cancellation.

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27. **Governing Laws.** The terms and provisions of this Franchise shall be interpreted in accordance with and governed by the laws of the State of Illinois.

28. **Acknowledgement.** Licensee acknowledges that:

(a) The term of this Franchise is set forth in paragraph 2(b) hereof with no promise or representation as to the renewal of this Franchise or the grant of a new Franchise.

(b) Licensee hereby represents that he has received a copy of this Franchise, has read and understands all obligations being undertaken and has had an opportunity to consult with his attorney with respect thereto at least five (5) days prior to his execution thereof;

(c) No representation has been made by McDonald's as to the future profitability of the Restaurant;

(d) Prior to the execution of this Franchise, Licensee has worked at a McDonald's restaurant, has had ample opportunity to contact existing licensees of McDonald's and to investigate all representations made by McDonald's relating to the McDonald's System;

(e) This Franchise establishes the Restaurant at the location specified on page 1 hereof only and that no "exclusive," "protected" or other territorial rights in the contiguous market area of such Restaurant is hereby granted or inferred;

(f) This Franchise supersedes any and all other agreements, representations, respecting the Restaurant and contains all the terms, conditions, and obligations of the parties with respect to the grant of this Franchise;

(g) McDonald's is the sole owner of the trademarks, trade names, service marks and good will associated therewith, and Licensee acquires no right, title, or interest in those names and marks other than the right to use them only in the manner and to the extent prescribed and approved by McDonald's;

(h) No future franchise or offers of franchises for additional McDonald's restaurants, other than this Franchise for the Restaurant, have been promised to Licensee and that any other franchise offer shall only be in writing, executed by an officer of McDonald's and specifically identified as a Franchise Agreement or Rewrite Commitment Letter;

(i) Neither McDonald's nor anyone acting on its behalf has made any representations, inducements, promises, or agreements, orally or otherwise, respecting the subject matter of this Franchise, which is not embodied herein or set forth in the Uniform Franchise Offering Circular For Prospective Franchisees; and

(j) This Franchise is offered to Licensee personally and to no others, and may not be accepted by any other person, partnership or corporation, or transferred by assignment, will or operation of law.

IN WITNESS WHEREOF, the parties hereto set their hands and seals, in duplicate, the day and year in this instrument first above written.

McDONALD'S CORPORATION, DBA
DELAWARE-McDONALD'S CORPORATION.

By:

Eugene Stachowiak
EUGENE STACHOWIAK,
ASSISTANT VICE PRESIDENT-FRANCHISING

Prepared By: Tammie Kontrimas *SK*

Fredric E. Beatty 5/15/93
Licensee Date
Fredric E. Beatty

Carolyn S. Beatty 5/15/93
Licensee Date
Carolyn S. Beatty

L/C 37/1074

New Restaurant Rider

This Rider is attached to and incorporated into that certain Franchise Agreement ("Agreement") dated April 29, 1993, by and between McDonald's Corporation, ("McDonald's") d/b/a Delaware McDonald's Corporation and Fredric E. Beatty and Carolyn S. Beatty ("Licensee").

1. Prior to the opening date of the Restaurant, all construction extras ordered or authorized by Licensee for which McDonald's has paid the parties constructing the Restaurant shall be paid by Licensee to McDonald's.
2. Licensee hereby agrees to the insertion by McDonald's into the Supplement Operator's Lease of dates of commencement and termination, when said dates are ascertained, and the finalized legal description of the Restaurant location.
3. The amount of the monthly base rental payment set forth in the Operator's Lease is computed based in part upon total current real estate and estimated construction costs. If such costs increase more than \$10,000.00 from now until 120 days after Restaurant opening, the monthly base rental payment will be recomputed and increased based upon said increased costs, but only to a maximum monthly base rental increase of \$325.00, according to the same rental formula. The corresponding monthly base sales will be adjusted accordingly. The effective date of said increase will be 120 days after Restaurant opening.
4. A non-interest bearing deposit of \$15,000.00 as security for the faithful performance of the terms of the Franchise Agreement (including the Lease), will be transferred from your restaurant located at Liberty Boulevard & Route 219, DuBois, Pennsylvania. This deposit will, subject to offset of losses by McDonald's arising from your breach of this Franchise Agreement, be returned to you at the end of the Franchise term as more specifically provided under the Lease.
5. The total site development and construction costs used to calculate this rental have been reduced by your contribution of \$91,250.00
6. This Franchise is also subject to your execution and delivery to us of a Franchise Termination Agreement dated April 29, 1993, pertaining to the McDonald's restaurant located at Liberty Boulevard & Route 219, DuBois, Pennsylvania.

DuBois, Pennsylvania:
S.R. 255
L/C: 37-1074
File# 10,729

EXHIBIT A TO FRANCHISE AGREEMENT

OPERATOR'S LEASE

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OPERATOR'S LEASE

THIS LEASE shall be considered effective the same date as the Franchise Agreement dated April 29, 1993, to which it is attached (the "Franchise Agreement"). The term "Landlord," when used in this Lease, shall refer to McDonald's Corporation and the term "Tenant," when used in this Lease, shall refer to the undersigned Tenant.

In consideration of the mutual promises contained in this Lease, the parties agree as follows:

ARTICLE 1 SUMMARY OF FUNDAMENTAL LEASE PROVISIONS

1.01 Term: (See Article 2.02) The term of this Lease will begin on the date the McDonald's Restaurant constructed on the Premises opens for business and will end twenty (20) years thereafter.

1.02 Rent: See Article 3.01 and Schedule B, attached.

1.03 Security Deposit: \$15,000.00 Cash (See Article 3.07)

1.04 Legal Description: See Schedule A and Article 2.01.

1.05 Liability Insurance Limits: \$1,000,000.00, per occurrence.

1.06 Attachments, Exhibits and Addenda: This Lease includes the following Attachments, Schedules and Addenda which will take precedence over conflicting provisions (if any) of this Lease, and they are made an integral part of this Lease and are fully incorporated into it by this reference.

- A. Schedule A -- Legal Description
- B. Schedule B -- Rent
- C. Easement dated December 24, 1992

References in this Article to the other Articles in this Lease are for convenience and to designate some of the other Articles where references to particular Fundamental Lease Provisions will be made. If there is any conflict between a Fundamental Lease Provision and the balance of the Lease, the former will control.

ARTICLE 2 PREMISES AND TERM

2.01 Premises: Landlord leases to Tenant the real estate described in Schedule A, attached, together with all easements and appurtenances and all buildings and improvements located on the real estate (all of which are collectively referred to in this Lease as "the Premises"). The Premises are subject to any easements, conditions, encumbrances, restrictions, and party wall agreements, if any, of record and roads and highways and zoning and building code restrictions existing on the date of this Lease.

2.02 Term: The term of this Lease will be as indicated in Article 1.01, subject, however, to any rights set forth in this Lease for the earlier termination of the Lease term. At the request of either party, a supplement establishing the beginning and ending dates of this Lease shall be executed. Landlord may establish the beginning date by notifying the Tenant in writing of the date it recognizes as the beginning date of the term.

2.03 Quiet Enjoyment: Landlord promises that Tenant, upon paying the rent and all other charges provided for in this Lease, and upon observing and keeping all Tenant's obligations, will lawfully and quietly hold, occupy and enjoy the Premises during the term of this Lease, without hindrance or interference by anyone claiming by, through or under Landlord, subject to the terms of this Lease and any mortgage or encumbrance now or hereafter placed on the Premises by Landlord.

2.04 Use of Premises: Tenant will use and occupy the Premises solely for a McDonald's Restaurant selling only such products and operating in a manner that may be designated by McDonald's Corporation. Tenant agrees to continuously occupy the Premises during the term of this Lease and agrees not to vacate them. A breach of this provision will be deemed to be substantial. If Tenant vacates the Premises during the term of this Lease, Landlord will have the right, in addition to its other rights and remedies, to enter the Premises for the purpose of continuing the operation of the McDonald's Restaurant; and, if Landlord so elects, Landlord shall be entitled to all profits, if any, from the operation of the restaurant. Tenant further agrees to conduct its restaurant business in a manner that will maximize Gross Sales. Tenant agrees to purchase, install and maintain, all at its own expense, signs and trade fixtures and equipment in accordance with the plans, specifications and layouts of McDonald's Corporation, or any of its subsidiaries, unless these items have been furnished by Landlord.

2.05 Rule Against Perpetuities: If the term of this Lease or the accrual of rent have not commenced within one (1) year from date of execution of this Lease, this Lease will become null and void and of no further force and effect. The sole remedy of Tenant in such case is the return of any monies paid to Landlord in anticipation of this Lease.

2.06 Construction and Delivery of Building and Other Improvements: Landlord will construct or have others construct or remodel or otherwise prepare the Premises for a McDonald's Restaurant in accordance with the then current plans and specifications of McDonald's Corporation. The Premises will be delivered to Tenant when they are sufficiently completed to allow Tenant to install, at Tenant's sole cost and expense, the signs, trade fixtures, equipment and other personal property and improvements necessary to complete the Premises for the operation of a McDonald's Restaurant, unless otherwise provided in Article 1.04. Tenant will promptly and diligently perform its work in accordance with the plans and specifications previously submitted by or to Tenant and approved by Landlord and in compliance with all applicable federal, state and local statutes, codes and regulations. Tenant will do all that is reasonably necessary to promptly open the restaurant as soon as possible after delivery of the Premises to the Tenant.

2.07 Acceptance of Premises: By taking possession of the Premises, Tenant acknowledges that Tenant has inspected the Premises and the improvements thereon and found them to be in a safe, satisfactory, and completed condition, ready for occupancy and the installation of trade fixtures,

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equipment and signage. All warranties as to the condition of the Premises or its fitness for use, either expressed or implied, are expressly waived by Tenant. Tenant may, however, receive certain warranties and guarantees, by separate agreement, from McDonald's Corporation or one of its subsidiaries; but those warranties will be personal covenants, only, and will not be binding upon the successors and assigns of Landlord.

2.08 Tenant's Compliance With Various Requirements: Tenant may not use or permit any person to use the Premises or any part of it for any use in violation of federal, state or local laws, including, but not limited to, present and future ordinances or other regulations of any municipality in which the Premises are situated. Tenant will not use or permit any person to use the Premises or any building thereon for the manufacture or sale of intoxicating liquor of any kind whatsoever. Tenant will not operate any coin or token operated vending or similar device for the sale of any goods, wares, merchandise, food, beverages or services, including but not limited to, pay telephones, pay lockers, pay toilets, scales, amusement devices, and machines for the sale of beverages, foods, candy, cigarettes or other commodities. A pay telephone may be installed for the use of Tenant's employees, only, if it is not accessible to the patrons and customers of the McDonald's Restaurant. During the term of this Lease, Tenant will keep the Premises and all buildings in a clean and wholesome condition and repair and will maintain the Premises so that they fully comply with all lawful health and police regulations. Tenant will conduct the McDonald's Restaurant on the Premises strictly in accordance with the terms and provisions of the Franchise Agreement. Tenant will minimize all cooking odors and smoke, maintain the highest degree of sanitation and comply with all ordinances, orders, directives, rules and regulations of all governmental bodies, bureaus and offices having jurisdiction over Tenant and over the Premises. Landlord makes no warranties or representations as to the state of such ordinances, rules, orders and directives, regulations, and Tenant acknowledges that Tenant has independently investigated them and will comply with them. Landlord makes no warranties or representations that the Premises, when accepted by Tenant, conform with the Federal, State or Industrial Safety Codes. Tenant will obtain, keep in full force and effect, and strictly comply with, all governmental licenses and permits which may be required for Tenant's use and occupancy of the Premises and the operation of the McDonald's Restaurant.

ARTICLE 3 RENT, TAXES, RECORDS AND REPORTS

3.01 Rent: Tenant promises to pay rent to Landlord, without offset or deduction, as follows:

A. Basic Rent: Tenant will pay monthly to Landlord the Basic Rent indicated in Schedule B, attached. The first Basic Rental payment will be due and payable on the commencement date of the term, and the subsequent monthly rental payments will be due thereafter, in advance, on or before the first day of every succeeding calendar month. If the date of commencement of rent occurs on a day other than the first day of the month, the first rental payment (both of Basic Rent and Percentage Rent, if any, and the last rental payment, if applicable) will be adjusted for the proportionate fraction of the whole month so that all rental payments, other than the first, will be made and become due and payable on the first day of each month.

B. Percentage Rent: In addition to the Basic Rent, Tenant promises to pay Percentage Rent to Landlord in the amount and during the periods set forth in Schedule B, attached, on all Gross Sales from the Premises in excess of the Monthly Gross Sales set forth in Schedule B, attached. See Article 3.03 for the manner of payment of Percentage Rent.

C. Definition of "Gross Sales": For the purposes of this Lease, the term "Gross Sales" will mean all receipts (cash, cash equivalent, credit or redeemed gift certificates) or revenue from sales by Tenant, and of all others, from all business conducted upon or from the Premises, whether such sales be evidenced by check, cash, credit, charge account, exchange or otherwise, and will include, but not be limited to, the amount received from the sale of goods, wares and merchandise, including sales of food, beverages and tangible property of every kind and nature, promotional or otherwise, and for services performed at the

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Premises, together with the amount of all orders taken or received at the Premises, all as may be prescribed or approved by the Franchise Agreement. Gross Sales will not include sales of merchandise for which cash has been refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided that such returned or exchanged merchandise will have been previously included in Gross Sales. Gross Sales will not include the amount of any sales tax imposed by any federal, state or other governmental authority directly on sales and collected from customers, provided that the amount of the tax is added to the selling price and actually paid by Tenant to such governmental authority. Each charge or sale upon installment or credit will be treated as a sale for the full price in the month during which such charge or sale is made irrespective of the time when Tenant receives payment (whether full or partial). In addition, Landlord may, from time to time, permit or allow certain other items to be excluded from Gross Sales. However, any such permission or allowance may be revoked or withdrawn at the discretion of Landlord and will not stop Landlord from requiring strict compliance with the terms of this Lease.

D. Taxes and Assessments: In addition to the Basic Rent and the Percentage Rent, Tenant will pay, as further additional charges, all real estate taxes and special and general assessments which may become due and payable by Landlord during the term or any extension of this Lease, including those taxes specifically designated as taxes in Landlord's Head Lease, if applicable, whether paid separately or included in rent to the Head Landlord. Landlord will first pay, when due, all taxes (except for Personal Property Taxes) and assessments, and Tenant will then promptly reimburse Landlord upon receipt of a billing advice from Landlord for all real estate tax and assessment payments made by Landlord to the taxing authority or the fee owner of the demised premises, if required by the Head Lease, as the case may be.

(a.) **First and Last Year:** All real estate taxes and general and special assessment payments of every nature paid by Landlord during the first and last year of the term of this Lease will be prorated. This tax proration will be based upon the fiscal year of the taxing authority levying the tax, using the percentage of the taxes payable during the first or last tax fiscal year that Tenant actually occupies, or had the right to occupy, the demised premises.

(b.) **Rent Taxes:** Tenant will also pay promptly, when due, any tax which is levied or assessed against the rental, real or tangible personal property, whether or not called a rental tax, excise tax, sales tax, gross receipts tax, tax on services or otherwise; and Tenant will promptly reimburse Landlord for any similar tax which Landlord is required to pay or, in fact, does pay. Such payment or reimbursement will not be deducted from Gross Sales.

(c.) **Personal Property Taxes:** Tenant agrees to pay all personal property taxes levied upon the fixtures, equipment and other improvements located on the Premises whether installed and paid for by Tenant or Landlord. The personal property taxes for the first and last year of the term of this Lease will be prorated in the same manner as the real estate taxes and assessments.

(d.) **Appeal:** Subject to Landlord's rights under the Head Lease (if any), Tenant, at Tenant's sole expense, is authorized and hereby permitted to contest and appeal property tax assessments on the demised premises, and Landlord will cooperate with and assist Tenant in any reasonable manner.

E. Other Charges and Expenses: Any other charge or expense of any nature which Landlord may be required to pay by virtue of Landlord's ownership or leasehold interest in the Premises (including, but not limited to, common area maintenance charges, merchant's association's dues, utility charges, fees and taxes and security service fees) will be promptly paid to Landlord as additional charges. Landlord will pay these charges, and Tenant will promptly reimburse Landlord upon receipt of a bill or statement from Landlord.

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F. Method and Proof of Payment: With respect to Articles 3.01 (D) and (E), above, or any other provision in this Lease which requires or contemplates Landlord first paying any charge or expense and then seeking reimbursement from Tenant, Landlord may, at its exclusive option, require Tenant to make such payments directly to the taxing authority, Head Landlord (if applicable), utility company or other party due a payment for which Tenant is liable under this Lease.

If Landlord wishes to exercise this option, Landlord shall notify Tenant of its election and shall supply Tenant with all information reasonably necessary to properly begin making such payments. From that time on, Tenant shall make such payments directly and all penalties and expenses thereafter accruing shall be the responsibility of Tenant. If Landlord so requests, Tenant shall promptly provide to Landlord reasonable proof of payment, including, but not limited to, receipted bills, canceled checks and certified statements.

Landlord reserves the right, upon further notice to Tenant, to cancel its election and to resume Landlord's payment and Tenant's reimbursement of these charges and expenses as provided in Articles 3.01 (D) and (E), above.

3.02 Records: Tenant will keep and preserve upon the Premises complete written records of all Gross Sales conducted in any calendar or business year for a period of three (3) years, in a manner and form satisfactory to Landlord. Tenant will permit Landlord or Landlord's representatives to examine or audit the records at any and all reasonable times, and will, upon Landlord's request, explain the method of keeping records. The books and records will include cash register tapes, properly identified, over-ring slips, sales journals, general ledger, profit and loss statements, balance sheets, purchase invoices, bank statements with canceled checks and deposit advices, corporate books and records, management company books, including, but not limited to, minute books and stock certificate books, state sales tax returns, federal income tax returns, retailer's occupation tax returns or similar returns required to be filed by the state in which the Premises are located.

3.03 Reports: Within ten (10) days after the end of each calendar month during the term of this Lease, Tenant will deliver to Landlord, at the place last fixed for the payment of rent, a statement by Tenant or Tenant's authorized representative, reflecting Gross Sales during the preceding month, and Tenant will pay at that time to Landlord all sums due based upon Gross Sales as shown in the statement for the period covered by the statement. Within thirty (30) days following the expiration of each calendar year of the term of this Lease, Tenant will deliver to Landlord at the place last fixed for the payment of rent, a statement of Gross Sales for the preceding calendar year (certified, at Tenant's expense, if requested by Landlord, by a Certified Public Accountant of good standing and reputation in the state in which the Premises are located) which will show Gross Sales separately for each monthly period during the preceding year.

A. Discrepancy in Reports: If there is a discrepancy between Gross Sales as reported by Tenant's monthly statements and the Gross Sales as shown in the annual statement, the annual statement will be deemed the final statement of Gross Sales for the year and the Percentage Rent will be adjusted accordingly. If, by virtue of any adjustment, any money is due from Tenant to Landlord, Tenant will pay such sum concurrently with the delivery of the annual statement. If there is any money due from Landlord to Tenant, Landlord will promptly pay such amount to Tenant.

B. Default in Reporting: Upon failure of Tenant to prepare and deliver promptly any monthly or annual statement required by this Lease or to make any required payment, Landlord may elect to treat Tenant's failure as a substantial breach of this Lease entitling Landlord to terminate this Lease and Tenant's right to possession of the Premises.

C. Inspection of Records by Landlord: If Landlord is dissatisfied with statements furnished by Tenant, Landlord may notify Tenant, and Landlord, at its option, may then examine Tenant's books or

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have a Certified Public Accountant selected by Landlord examine Tenant's books. If such examination discloses any underpayment of Percentage Rent, Tenant will promptly pay the deficient amount. If Tenant contests such deficiency, Landlord will then appoint an independent auditor to examine Tenant's books and records. If the independent audit confirms that there has been an underpayment exceeding two percent (2%) of the Percentage Rent, as represented by Tenant, Tenant will, in addition to the above, reimburse Landlord for the cost of the auditor's examination.

3.04 No Abatement of Rent: Except as provided in this Lease, damage to or destruction of any portion or all of the buildings, structures and fixtures upon the Premises, by fire, the elements or any other cause, whether with or without fault on the part of Tenant, will not terminate this Lease or entitle Tenant to surrender the Premises or entitle Tenant to any abatement of or reduction in the rent payable, or otherwise affect the respective obligations of the parties, any present or future law to the contrary notwithstanding, subject to Section 6.05 in this Lease.

3.05 Interest on Past Due Rent: All rent and other sums that may become due and owing from Tenant to Landlord will bear interest from their respective due dates at the highest rate of interest permitted by law in the state in which the Premises are located or, if there is no maximum rate permitted by law, at 15% per annum.

3.06 Lien for Rent: Tenant grants to Landlord a lien upon all Tenant's property located on the Premises, from time to time, for all rent and other sums due from Tenant to Landlord under the provisions of this Lease.

3.07 Security Deposit: Tenant, as security for the performance of its obligations under this Lease or the Franchise Agreement, has deposited with Landlord the sum indicated in Article 1.03. Landlord, or its successors or assigns, will retain the Security Deposit as long as this Lease is in force and, unless otherwise required by law, without any obligation for the payment of interest and with full authority to commingle it with any other funds until the cessation of liabilities of Tenant under the Lease, at which time Landlord or its successors or assigns are bound, within 30 days, to repay so much of the amount of the Security Deposit as may not have been used to cure Tenant's defaults. If there is a default by Tenant in any of Tenant's obligations or any of the terms, covenants, agreements and conditions of this Lease or the Franchise Agreement, Landlord may, in addition to other remedies available, use, apply or retain all or any part of the Security Deposit to cure any default of Tenant, or otherwise make itself whole for any damage or expense occasioned thereby. This shall include any damages and expenses or deficiencies in the reletting of the Premises, regardless of whether the accrual of such damage, expenses or deficiencies occurred before or after eviction or summary or other re-entry by Landlord.

If Landlord resorts to the Security Deposit, Tenant will promptly restore the amount of such Security Deposit so that the sum will remain intact at all times. Upon any assignment by Landlord of its interest in this Lease, Landlord and subsequent assignors will be fully released and discharged of any liability with respect to any Security Deposit made by Tenant under this Lease upon procuring an assumption from the assignee of all of Landlord's responsibilities with respect to the Security Deposit. Tenant will not assign or encumber the Security Deposit and Landlord will not be bound by any such assignment or encumbrance.

ARTICLE 4 OBLIGATIONS OF TENANT

4.01 Utilities: Tenant will pay directly all charges for gas, electricity, or other utilities, sewer charges, taxes and driveway fees, if applicable, and for all water used on the Premises as such charges become due. Tenant's obligation to pay the foregoing charges will commence five (5) days after Tenant's equipment is delivered to the Premises.

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4.02 Maintenance and Repair: Tenant will, at its expense, (a) keep the entire Premises, all improvements, utility lines and Tenant's or Landlord's fixtures and equipment at all times in good repair, order or condition; (b) replace all broken, damaged or missing personal property, fixtures or equipment; and (c) at the expiration of the term of this Lease, whether by lapse of time or otherwise, surrender the Premises in good repair, order and condition, ordinary wear and tear excepted, and loss by fire and other casualty excepted to the extent that provision for such exception may elsewhere be made in this Lease. Upon request of Landlord, Tenant will remove all signs and other identifying features from the Premises. Tenant's obligation to make repairs to the premises will include all repairs, whether ordinary or extraordinary, including structural repairs to the foundation, floors, walls and roof.

4.03 Alterations: Tenant shall not make any change in, alteration of, or addition to any part of the Premises, or remove any of the buildings or building fixtures without, in each instance, obtaining the prior written consent of Landlord and complying with all governmental rules, ordinances and regulations.

4.04 Surety: Before commencement of any construction or installation of any structure, fixture, equipment or other improvement on the Premises, or of any repairs, alterations, additions, replacement or restoration in, on or about the Premises, Tenant will give Landlord written notice specifying the nature and location of the intended work and the expected date of commencement. Tenant will deposit with Landlord, if requested by Landlord, a certificate or other evidence satisfactory to Landlord that Tenant has obtained a bond or that Tenant's building contractor, if any, has furnished a bond in favor of Landlord, with a surety approved by Landlord, guaranteeing the performance and completion of all work free and clear of all liens arising from such work. Landlord reserves the right to withhold its approval of any proposed construction, improvement, repair, alteration or replacement and, without limiting the generality of the foregoing, may require as a condition of its approval that it be permitted to review and approve any contract entered into by Tenant regarding such notices as may be necessary to protect Landlord against liability for liens and claims.

4.05 Liens Against Property: Nothing in this Lease will authorize Tenant to do any act which will in any way encumber the title of Landlord to the Premises. The interest or estate of Landlord or the fee owner in the Premises, if Landlord is not the fee owner, will not in any way be subject to any claim by lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Tenant. Tenant will not permit the Premises to become subject to any mechanics', laborers' or materialsmen's lien for labor or material furnished to Tenant in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction of, or sufferance of, Tenant.

If any lien is filed against the Premises or Tenant's interest in this Lease, at Landlord's option, Tenant will either pay the amount of the lien in full or will, upon demand of Landlord, provide and pay for a non-cancelable bond, placed with a reputable company, approved by Landlord, in an amount deemed sufficient by Landlord, insuring the interest of Landlord and any mortgagee from any loss by reason of the filing of such lien. Tenant will immediately pursue in good faith its legal remedies to remove a lien on the Premises.

4.06 Assignment by Tenant: Tenant will not allow or permit any transfer of this Lease or any interest in this Lease by operation of law, or assign, convey, mortgage, pledge or encumber this Lease or any interest in this Lease, or permit the use or occupancy of the Premises or any part thereof without, in each case, obtaining Landlord's prior written consent. No assignment (with or without Landlord's consent) will release Tenant from any of its obligations in this Lease. Tenant will also assign its interest in the Security Deposit if Landlord consents to an assignment of this Lease. Notwithstanding the foregoing, Landlord shall consent to an assignment by Tenant of his rights and interest in this Lease if the Tenant complies with the terms and conditions of the Franchise Agreement pertaining to the assignment of the Franchise Agreement.

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4.07 **Franchise Agreement:** Tenant will comply with and perform all covenants contained in the Franchise Agreement. Tenant's breach of any of the terms and covenants of the Franchise Agreement will also constitute a breach of this Lease. Termination, default or revocation of the Franchise Agreement for any reason, either in whole or in part, will also terminate this Lease, without further notice being required.

ARTICLE 5 FIXTURES AND EQUIPMENT

5.01 **Fixtures:** All buildings and improvements and all plumbing, heating, lighting, electrical and air conditioning fixtures and equipment and all other articles of property which, at the date Tenant takes possession of the Premises, are the property of Landlord or of the fee owner of the premises are and will remain a part of the real estate and be considered to be leased in this Lease. Any additions, alterations or remodeling of improvements made to the Premises will immediately become the property of Landlord and will not be removed by Tenant at the termination of this Lease by lapse of time or otherwise.

5.02 **Removal of Tenant's Property:** At or prior to the termination of this Lease, whether by lapse of time or otherwise, Tenant will, subject to any rights of Landlord under the Franchise Agreement, remove all of its personal property and trade fixtures from the Premises and will repair any damage to the Premises which may have been caused by such removal.

ARTICLE 6 INSURANCE AND DAMAGE TO PROPERTY

6.01 **Liability Insurance:** Tenant will pay for and maintain during the entire term of this Lease the following insurance:

(A) Worker's Compensation Insurance prescribed by law in the state in which the Premises are located and Employer's Liability Insurance with \$100,000 minimum limit. If the state in which the premises are located allows the option of carrying no Worker's Compensation, and Tenant chooses to exercise that option, Tenant shall nonetheless carry and maintain other insurance with limits at least equivalent with those established for the State Worker's Compensation law or as may be approved by the Landlord.

(B) Comprehensive General Liability Insurance in a form approved by Landlord, on an occurrence basis, with a combined single limit for Bodily Injury and Property Damage as described in Article 1.05.

(C) Fire Legal Liability Insurance with limits of \$500,000 per occurrence.

6.02 **Rental Insurance:** Tenant will maintain and keep in force rental insurance in an amount equal to not less than the total of one year's Basic Rent as specified in Article 1.02 of this Lease.

6.03 **Property Insurance:** Tenant will maintain and keep in force, all risk insurance, including flood, earthquake and earth movement coverage, upon the Premises, operational equipment, signs, furnishings, decor, plate glass and supplies, in a so-called replacement cost form obligating the insurer to pay the full cost of repair or replacement. It is intended that neither Landlord nor Tenant will be a co-insurer, and to that end, if the insurance proceeds are not adequate to rebuild the building or other improvements located on the Premises, Tenant will be obligated for the difference between the proceeds obtained and the actual cost of the restoration of the improvements on the Premises and fixtures and equipment.

6.04 **Placement and Policies of Insurance:** All insurance policies required to be carried in this Lease will name Landlord and any party designated by Landlord as additional insured. All policies will be effective on or prior to the date Tenant is given possession of the Premises for the purpose of installing equipment, and evidence of payment of Premiums and duplicate copies of policies of the insurance

required in this Lease will be delivered to Landlord at least thirty (30) days prior to the date that Tenant opens for business or thirty (30) days prior to the expiration dates of an existing policy of insurance. All policies of insurance will include as an additional insured any mortgagee, as its interest may appear, and will include provisions prohibiting cancellations or material changes to the policy until thirty (30) days prior written notice has been given to Landlord.

If Tenant should fail to obtain the required insurance, Landlord may, but need not, purchase the insurance, adding the premiums paid to Tenant's monthly rent. Tenant may authorize Landlord to purchase and to administer the required minimum insurance on Tenant's behalf. However, Landlord, by placement of the required minimum insurance, assumes no premium expense nor guarantees any losses sustained by Tenant. Landlord may relieve itself of all obligations with respect to the administration of the required insurance coverage by giving ten (10) days written notice to Tenant.

All insurance will be placed with a reputable insurance company licensed to do business in the state in which the Premises are located and, having a financial size category of XV, or a company acceptable to Landlord, and a policy holders rating of "A +" or "A" (excellent), as assigned by Alfred M. Best and Company, Inc. Tenant further agrees to increase the various insurance coverages specified above from time to time upon the written request of Landlord to meet changing economic conditions and requirements imposed upon Landlord under the Landlord's Head Lease and loan agreements, if any.

6.05 Repair and Replacement of Buildings: If the building on the Premises is damaged by fire or any other casualty, Landlord will, within a reasonable time from the date of the damage or destruction, repair or replace the building so that Tenant may continue in occupancy. Landlord's obligation to rebuild or restore the Premises will, however, be only to the extent of insurance proceeds recovered. Basic Rent required to be paid in this Lease will not abate during the period of untenability. If the building cannot be replaced or repaired within a reasonable time due to the inability of Landlord to obtain materials and labor, or because of strikes, acts of God or governmental restrictions that would prohibit, limit or delay the construction, then the time for completion of the repair or replacement will be extended accordingly. However, in any event, if the repair or replacement of the building has not been commenced within a period of one (1) year from the date of the damage or destruction, Tenant or Landlord may, at their option, terminate this Lease. If any damage or destruction occurs during the last five (5) years of the term of this Lease to the extent of 50% or more of the insurable value of the building, Landlord may, by notice to Tenant within forty (40) days after the occurrence of the damage or destruction, in lieu of repairing or replacing the building, elect to terminate this Lease as of the date of the damage or destruction. Tenant hereby expressly waives and releases any and all claims against Landlord for damages in case of Landlord's failure to rebuild or restore the building in accordance with the provisions of this section. Tenant's sole remedy for any such failure will be to elect to terminate this Lease as of the date of occurrence of the damage or destruction. If the building and other improvements are not repaired, restored or replaced, for any reason, all proceeds of the fire and extended coverage insurance applicable to the building and other permanent improvements will be paid and given to Landlord. Tenant agrees to execute and deliver any release or other document Landlord may request to obtain the release or control of the proceeds.

If Landlord repairs and restores the premises, as required above, Tenant agrees to promptly repair, replace, restore or rebuild Tenant's leasehold improvements, equipment and furnishings ("Tenant's Improvements") in accordance with the current standards and specifications for McDonald's Restaurants upon notice from Landlord that the Premises are ready for Tenant's Improvements. Tenant agrees to submit for Landlord's approval, all plans and specifications for Tenant's Improvements to Landlord within 30 days after Landlord delivers its plans and specifications for the restored Premises to Tenant.

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ARTICLE 7 RIGHTS OF LANDLORD

7.01 Inspection by Landlord: Landlord or any authorized representative of Landlord may enter the Premises at all times during reasonable business hours for the purpose of inspecting the Premises.

7.02 Indemnity for Litigation: If Landlord becomes subject to any claim, demand or penalty or becomes a party to any suit or other judicial or administrative proceeding by reason of any act occurring on the Premises, or by reason of an omission with respect to the business or operation of the McDonald's Restaurant, Tenant will indemnify and hold Landlord harmless against all judgments, settlements, penalties, and expenses, including reasonable attorney's fees, court costs and other expenses of litigation or administrative proceeding incurred by or imposed on Landlord in connection with the investigation or defense relating to such claim or litigation or administrative proceeding. At the election of Landlord, Tenant will also defend Landlord.

Tenant will pay all costs and expenses, including reasonable attorney's fees, which may be incurred by Landlord in enforcing any of the covenants and agreements of this Lease. All such costs, expenses and attorney's fees will, if paid by Landlord, together with interest, be additional rent due on the next rent date after such payment or payments.

7.03 Waiver of Claims: Landlord and Landlord's agents and employees will not be liable for, and Tenant waives claims for, damage to persons or property sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises or the building of which they are a part, including, but not limited to, claims for damage resulting from: (a) equipment or appurtenances becoming out of repair; (b) Landlord's failure to keep the building or the Premises in repair; (c) injury done or occasioned by wind, water or other natural element; (d) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water and steam pipes, stairs, porches, railings or walks; (e) broken glass; (f) the backing up of any sewer pipe or downspout; (g) the bursting, leaking or running of any tank, tub, washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or Premises; (h) the escape of steam or hot water (it being agreed that all the foregoing are under the control of Tenant); (i) water being upon or coming through the roof, skylight, trapdoor, stairs, walks or any other place upon or near such building of the Premises or otherwise; (j) the falling of any fixture, plaster or stucco; (k) interruption of service of any utility.

7.04 Re-entry Upon Default: If (a) Tenant defaults in the payment of any installment of Basic Rent or Percentage Rent or any additional sum due in this Lease; (b) Tenant defaults in any of the covenants, agreements, conditions or undertakings to be performed by Tenant other than the payment of rent (Basic and Percentage Rent or additional charges) and such default continues for ten (10) days after notice in writing to Tenant; (c) Tenant defaults in any of the terms of the Franchise Agreement or if the Franchise Agreement should terminate, whether by lapse of time or otherwise; (d) proceedings in bankruptcy or for liquidation, reorganization or rearrangement of Tenant's affairs are instituted by or against Tenant; (e) a receiver or trustee is appointed for all or substantially all of Tenant's business or assets on the grounds of Tenant's insolvency; (f) a trustee is appointed for Tenant after a petition has been filed for Tenant's reorganization under the Bankruptcy Act of the United States; (g) Tenant makes an assignment for the benefit of its creditors; or (h) Tenant vacates or abandons the Premises, then in any of the above events, Landlord, at its election, may declare the term of this Lease ended and, either with or without process of law, re-enter, expel, remove and put out Tenant and all persons occupying the Premises under Tenant, using such force as may be necessary in so doing, and repossess and enjoy the Premises. Such re-entry and repossession will not work a forfeiture of the rents to be paid or terminate the covenants to be performed by Tenant during the full term of this Lease.

Upon the expiration of the term of this Lease by reason of any of the events described above, or in the event of the termination of this Lease or right to possession by summary dispossession proceedings or

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under any provision of law now or at any time in force, whether with or without legal proceedings, Landlord may, at its option, relet the Premises or any part for the account of Tenant and collect the rents therefor, applying them first to the payment of expenses Landlord may have in recovering possession of the Premises, including legal expenses and attorney's fees, and for putting the Premises into good order or condition or preparing or altering the same for re-rental, expenses, commissions and charges paid, assumed or incurred by Landlord in reletting the Premises, and then to the fulfillment of the covenants of Tenant in this Lease. Any such reletting may be for the remainder of the term of this Lease or for a longer or shorter period. In any case and whether or not the Premises or any part thereof is relet, Tenant will pay to Landlord the Basic Rent, any additional charges, and all other charges required to be paid by Tenant up to the time of termination of this Lease, or of recovery of possession of the Premises by Landlord, as the case may be. Thereafter, Tenant covenants and agrees, if required by Landlord, to pay to Landlord, until the end of the term of this Lease, the equivalent of the amount of all the Basic Rent reserved in this Lease and all other charges required to be paid by Tenant, less the net income of reletting, if any. These payments will be due and payable by Tenant to Landlord on the rent days above specified. In any of the circumstances described above, Landlord will have the election to recover against Tenant, as damages for loss of the bargain and not as a penalty, an aggregate sum which, at the time of such termination of this Lease, or of such recovery of possession of the Premises by Landlord, represents the then present worth of the excess, if any, of the aggregate of the Basic Rent and all other charges payable by Tenant in this Lease that would have accrued for the balance of the term over the aggregate rental value of the Premises for the balance of the term. Nothing in this Lease contained will limit or prejudice Landlord's right to prove and obtain as liquidated damages arising out of such breach or termination the maximum amount allowed by any statute or rule of law which may govern the proceeding in which such damages are to be proved, whether such amount be greater, equal to, or less than, the amount of the then present worth of the excess of the Basic Rent and all other charges payable by Landlord in this Lease over the rental value referred to above.

7.05 Holding Over: Tenant will not hold over beyond the expiration or sooner termination of the term of this Lease. If Tenant does hold over, it will give rise to a tenancy at the sufferance of Landlord upon the same conditions as are provided for in this Lease with a monthly rental for the period of such holding over which is double the monthly installment of Basic Rent and Percentage Rent last paid by Tenant during the term of this Lease, and interest thereon, as liquidated damages, and not as a penalty. Landlord's acceptance of any rent after holding over begins does not renew this Lease. This provision does not waive Landlord's rights of re-entry or any other right in this Lease resulting from Tenant's breach of the covenant not to hold over or any other breach in this Lease.

7.06 Remedies Cumulative: The remedies in this Lease granted to Landlord will not be exclusive or mutually exclusive, and Landlord will have such other remedies against Tenant as may be permitted in law or in equity at any time. Any exercise of a right of termination by Landlord will not be construed to eliminate any right of Landlord to damages on account of any default of Tenant.

7.07 Waiver: No delay or omission of Landlord to exercise any right or power arising from any default will impair any such right or power or will be construed to be a waiver of any such default or an acquiescence under this Lease. No waiver of any breach of any of the covenants of this Lease will be held to be a waiver of any other breach or waiver, acquiescence in or consent to any further or subsequent breach of the same covenant. The rights in this Lease given to receive, collect or sue for any rent, monies or payments or to enforce the terms, provisions and conditions of this Lease, or to prevent the breach or non-observance thereof, or to exercise any right or remedy in this Lease, will not in any way affect the right or power of Landlord to declare the term ended and to terminate this Lease because of any default in or breach of any of the covenants, provisions or conditions of this Lease.

7.08 Accord and Satisfaction: No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent in this Lease stipulated will be deemed to be other than on account of the earliest stipulated rent, nor will any endorsement or statement on any check or any letter accompanying any check

or payment as rent be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided for in this Lease.

7.09 Right to Perform for Tenant: If Tenant should fail to perform any of its obligations under the provisions of this Lease, Landlord, at its option, may (but will not be required to) do the same or cause the same to be done. In addition to any and all other rights and remedies of Landlord, the cost incurred by Landlord in connection with such performance by Landlord will be an additional charge due from Tenant to Landlord, together with interest thereon at the maximum rate permitted by law in the state in which the Premises are located on the next rent date after such expenditure or, if there is no maximum rate permitted by law, at 15% per annum.

7.10 Condemnation: If the entire Premises are condemned under eminent domain, or acquired in lieu of condemnation, for any public or quasi-public use or purpose, all rentals and taxes or other charges will be paid to that date, and Tenant will have the right to make a claim for the value of its leasehold estate. Tenant will, also, have the right to claim and recover such compensation as may be separately awarded for any and all damage to Tenant's business by reason of the condemnation and for any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, equipment and other personal property. Tenant specifically waives and releases any claim it may have, however, for the value of the building, fixtures and other improvements on the Premises whether or not installed or paid for by Tenant. Tenant further agrees to subordinate any claim it may have to Landlord's claim for the value of the improvements.

If only a part of the Premises is taken or condemned and Landlord determines that the operation of a McDonald's Restaurant on the Premises is no longer economically feasible or desirable, Landlord may at any time, either prior to or within a period of sixty (60) days after the date when possession of the Premises will be required by the condemning authority, elect to terminate this Lease. If Landlord fails to exercise its option to terminate this Lease or will not have any such option, Landlord will (1) with reasonable promptness, make necessary repairs to and alterations of the improvements on the Premises for the purpose of restoring it to substantially the same use as that which was in effect immediately prior to such taking, to the extent that may be necessary by the condemnation; and (2) be entitled to the entire award for such partial taking. If Landlord does not elect to terminate this Lease, Tenant's Basic Monthly Rent will be reduced by a fraction, the numerator of which will be the total condemnation award or settlement and the denominator of which will be the fair market value of the Premises, prior to the taking, as determined by an independent appraiser selected by the Landlord.

7.11 Subordination and Non-Disturbance: This Lease and all of Tenant's rights, title and interest under the Lease will be subject, subordinated and inferior to the lien of any and all mortgages and to the rights of all parties under any sale and leaseback of the Premises and to any and all terms, conditions, provisions, extensions, renewals or modifications of any such mortgage or mortgages or sale and leaseback which Landlord or any grantee of Landlord (collectively hereafter called "Fee Owner") has or may place upon the Premises and the improvements thereon, in the same manner and to the same extent as if this Lease had been executed subsequent to the execution, delivery and recording of such mortgage or of the deed and lease under the sale and leaseback. This provision is intended to include the right of any grantee or Landlord under a sale and leaseback to further encumber the property with one or more mortgages, all of which are declared to be superior to the interest of Tenant in this Lease.

If a mortgagee or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in such mortgage, or in the event of the default under the Lease related to a sale and leaseback of the Premises, Tenant's right of possession will not be disturbed provided (a) Tenant is not then in default under this Lease and (b) Tenant attorns to such title holder. Tenant agrees that upon a mortgage foreclosure it will attorn to any mortgagee or assignee or any purchaser at the foreclosure sale (collectively called "Purchaser") as its Landlord and in the case of a default under the terms of the lease

used in a sale and leaseback, it will attorn to the Fee Owner of the Premises as its new Landlord and, in either event, this Lease will continue in full force and effect as a direct Lease between Tenant and such party under all of the terms of this Lease. If there is a foreclosure of a mortgage placed on the property by a grantee under a sale and leaseback, such attornment will be required only if, at the time of such foreclosure, the Lease used in the sale and leaseback is also in default.

The subordination of this Lease to any mortgagee of Fee Owner provided for in this Lease or to any Lease under a sale and leaseback arrangement will be automatic and self-operative, and no special instrument of subordination will be necessary. Without limiting such automatic and self-operative subordinations, however, Tenant will, on demand, at any time or times, execute, acknowledge and deliver to Fee Owner, without expense to Fee Owner, any and all instruments that may be necessary or proper to evidence the subordination of this Lease and all rights in this Lease to the lien of any such mortgage, or to any such lease under a sale and leaseback arrangement. If Tenant fails, at any time, to execute, acknowledge and deliver any such subordination instrument within five (5) days after receipt of the notice, in addition to any other remedies available, Landlord may execute, acknowledge and deliver the same as the attorney-in-fact on Tenant's behalf; and Tenant hereby irrevocably makes, constitutes and appoints Landlord, its successors and assigns, such attorney-in-fact for that purpose.

ARTICLE 8 MISCELLANEOUS

8.01 No Agency Created: Tenant will have no authority, express or implied, to act as agent of Landlord or any of its affiliates for any purpose. Tenant is, and will remain, an independent contractor responsible for all obligations and liabilities of, and for all loss or damage to, the Premises, including any personal property, equipment, fixtures or real property connected with them and for all claims or demands based on damage or destruction of property or based on injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of the McDonald's Restaurant located on the Premises.

8.02 Recording of Lease: Tenant will not record this Lease without the written consent of Landlord. However, upon the request of either party, the other party will join the execution of a memorandum or a so-called "short-form" of this Lease for the purpose of recordation. The memorandum or short form of this Lease will describe the parties, the Premises and the term of this Lease and will incorporate this Lease by reference. The party requesting execution of the memorandum will bear all costs for recording it.

8.03 Force Majeure: Whenever a period of time is provided in this Lease for either party to do or perform any act or thing, except the payment of monies, neither party will be liable for any delays due to strikes, lockouts, casualties, acts of God, war, governmental regulation or control or other causes beyond the reasonable control of the parties, and in any event the time period for the performance of an obligation in this Lease will be extended for the amount of time of the delay. This clause will not apply to, or result in, an extension of the term of this Lease.

8.04 Paragraph Headings: Headings in this Lease are for convenience only and are not to be construed as part of this Lease and will not be construed as defining or limiting in any way the scope or intent of the provisions of this Lease.

8.05 Invalidity of a Provision: If any term or provision of this Lease will to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease will not be affected, but each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law. If any material term of this Lease is stricken or declared invalid, Landlord reserves the right to terminate this Lease at its sole option.

8.06 Law Governing: The terms and provisions of this Lease will be governed by the laws of the State of Illinois.

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8.07 Entire Agreement: This Lease and the Franchise Agreement will be deemed to include the entire agreement between the parties, and it is agreed that neither Landlord nor anyone acting in its behalf has made any statement, promise or agreement or taken upon itself any engagement whatever, verbally or in writing, in conflict with the terms of this Lease, or that in any way modifies, varies, alters, enlarges, or invalidates any of its provisions, or extends the term of this Lease, and that no obligations of Landlord will be implied in addition to the obligations expressed in this Lease. This agreement cannot be changed orally but only by an agreement in writing signed by Landlord and Tenant.

8.08 Parties Bound: The terms of this Lease will extend to and be binding upon the administrators, executors, heirs, assigns and successors of the parties, subject to the terms of Article 4.06.

8.09 Notices or Demands: All notices to or demands upon Landlord or Tenant given under any of the provisions of this Lease will be in writing. Any notices or demands from Landlord to Tenant will be deemed to have been duly and sufficiently given if a copy has been delivered personally or mailed by United States registered or certified mail in an envelope properly stamped and addressed to Tenant at the address of the Premises. Any notices or demands from Tenant to Landlord will be deemed to have been duly and sufficiently given if mailed by registered or certified mail in an envelope properly stamped and addressed to Landlord at McDonald's Plaza, Oak Brook, Illinois 60521, Attention: Director, Real Estate Legal Department. Mailed notices shall be deemed received three (3) business days after being deposited in the U.S. Mail. Either party, by notice, may change the address to which notice will be sent, but all notices mailed to Tenant at the address of the restaurant on the Premises will be deemed sufficient.

To indicate their consent to this Operator's Lease the parties, or their authorized representatives or officers, have signed this document on the date indicated.

TENANT: Fredric E. Beatty
and Carolyn S. Beatty

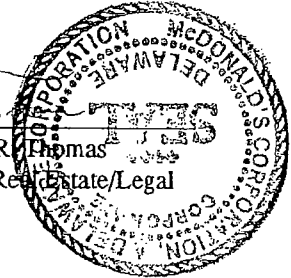
Fredric E. Beatty
Fredric E. Beatty

Carolyn S. Beatty
Carolyn S. Beatty

LANDLORD:

By: _____

Joseph R. Thomas
Director of Real Estate/Legal



Date signed: April 9, 1993

Location code: 37-1074

Prepared by: MCA
(initial)

Date signed: May 15, 1993

37-1074
OL-WHOLE
(12-92)

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ALL that certain parcel of land situate in Sandy Township, Clearfield County, Commonwealth of Pennsylvania being bounded and described as follows:

BEGINNING at a point on the centerline of Old State Route 0255 said point being located North 74 degrees 30 minutes 48 seconds West a distance of 75.15 feet from the southeast corner of land now or formerly Wal-Mart Stores, Inc.; thence along the centerline of Old State Route 0255 North 74 degrees 30 minutes 48 seconds West a distance of 156.10 feet to a point; thence through said right of way North 15 degrees 29 minutes 12 seconds East a distance of 25.00 feet to a point on the northerly right of way line of Old State Route 0255; thence through land now or formerly Wal-Mart Stores, Inc. North 19 degrees 19 minutes 52 seconds East a distance of 278.64 feet to a point; thence continuing through land now or formerly Wal-Mart Stores, Inc. South 70 degrees 40 minutes 08 seconds East a distance of 115.24 feet to a point; thence by the arc of a circle curving to the right having radius of 49.50 feet for an arc distance of 45.74 feet to a point; thence South 13 degrees 19 minutes 52 seconds West a distance of 233.54 feet to a point on the northerly right of way line of Old State Route 0255; thence through said right of way line South 15 degrees 29 minutes 12 seconds West a distance of 40.00 feet to a point at the place of beginning.

CONTAINING 46,006.837 square feet or 1.056 acres.

OUTLOT NO. 1 RECORDED ON APERTURE CARD 984, 2ND. JUNE, 1992.

THIS description is in accordance with a survey by John Robert Gales, Registered Surveyor, J.R. Gales and Associates, Inc., dated August 11, 1992 and last revised on December 16, 1992.

TOGETHER with those two certain access easements as set forth in that certain Access Easement Agreement between Wal-Mart Stores, Inc. and McDonald's Corporation, d/b/a Delaware McDonald's Corporation dated December 24, 1992 and recorded December 31, 1992.

SCHEDULE A

97090800101

LOCATION CODE: 37/1074

RENT SCHEDULE

For the term of this Lease, the Basic Rent will be \$8,625.00 per month, plus Percentage Rent of 10% of Monthly Gross Sales over \$86,250.00.

SCHEDULE B

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ACCESS EASEMENT

THIS ACCESS EASEMENT is entered into as of the 24th day of December, 1992, by and between WAL-MART STORES, INC., a Delaware corporation whose address is 701 S. Walton Boulevard, Attn: Property Development, Bentonville, Arkansas 72716 ("Wal-Mart"); and McDONALD'S CORPORATION, dba DELAWARE McDONALD'S CORPORATION whose address is P.O. Box 66207, AMF O'Hare, Chicago, IL 60666 ("Grantee").

WITNESSETH:

WHEREAS, Wal-Mart is the owner of that certain tract or parcel of land containing 19.0 acres, more or less, situated in the Township of Sandy County of CLEARFIELD, State of PENNSYLVANIA, identified in part as Tract 1 on the site plan attached hereto as Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Grantee will be by the time this instrument is recorded the owner of that certain 1.0 acre tract or parcel of land in the same township, county, and state, which tract lies adjacent to Tract 1 and is identified as Tract 2 on Exhibit A and more fully described on Exhibit "B" attached hereto and made a part hereof, which tract Wal-Mart is current owner of and intends to convey fee simple title to Grantee by a warranty deed; and

WHEREAS, Grantee has requested from Wal-Mart, and Wal-Mart is desirous of granting to Grantee, nonexclusive easements for pedestrian and vehicular ingress and egress over and across a portion of Tract 1 and the location of directional signage, identified as the Access Area and Additional Access Area on Exhibit A and more fully described on Exhibit "C" attached hereto and made a part hereof ("Access Area" and "Additional Access Area");

NOW THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, Wal-Mart does hereby grant to Grantee a non-exclusive easement for vehicular and pedestrian ingress and egress over and across the Access Area and Additional Access Area so as to allow vehicular or pedestrian traffic access to and from Tract 2 and State Route

SCHEDULE C

Copy to operator

EXHIBIT

B

1 that french fryer in use?

2 A. I don't know. I don't know how
3 long it was in use.

4 Q. Does McDonald's, Inc., the
5 parent corporation, provide you with
6 guidelines in which to run your
7 business?

8 ATTORNEY LEE:

9 Just note an objection.

10 It's McDonald's Corporation.

11 You can answer.

12 A. Well, not --- I have to perform
13 to their standards as far as preparing
14 product, what I can sell and following
15 their procedures, guidelines, yes. But
16 they don't tell me how to run my
17 business.

18 BY ATTORNEY MONTGOMERY:

19 Q. Does McDonald's reserve the
20 right to come onto your premises and
21 inspect your books?

22 ATTORNEY LEE:

23 Objection to the form of
24 the question. If you understand
25 it, you can answer.

1 A. When you say the books, I don't
2 know what you mean by the books.

3 BY ATTORNEY MONTGOMERY:

4 Q. Well, before you told me that
5 the service fees were a percentage of
6 your gross ---

7 A. Sales.

8 Q. --- gross sales. Would
9 McDonald's reserve the right to make
10 sure you were paying the proper service
11 fees?

12 A. Yes.

13 Q. Okay. Is McDonald's able to
14 come onto your premises to inspect that
15 you were operating your restaurant in
16 accordance with the guidelines they
17 gave you?

18 A. Yes.

19 Q. Does McDonald's provide you with
20 guidelines to follow in the case of
21 someone being injured at your store?

22 ATTORNEY LEE:

23 I'm sorry. I just lost
24 it. Can you read that back,
25 please?

1 COURT REPORTER READS BACK PREVIOUS
2 QUESTION

3 ATTORNEY LEE:

4 You can answer.

5 A. No.

6 BY ATTORNEY MONTGOMERY:

7 Q. Does McDonald's provide you with
8 guidelines to follow regarding
9 inspection of your store's equipment?

10 ATTORNEY LEE:

11 Object to the form of the
12 question. Can you be more
13 specific in terms of ---?

14 BY ATTORNEY MONTGOMERY:

15 Q. Do you make regular inspections
16 of the equipment at your store?

17 ATTORNEY LEE:

18 And I'm going to just
19 object. If you could be more
20 specific as to what standpoint.
21 In terms of physically how they
22 look, calibration, you know, the
23 right temperature?

24 BY ATTORNEY MONTGOMERY:

25 Q. Just to ensure that the

1 equipment is functioning properly.

2 A. Not a formal inspection, no.

3 Q. Okay. Do you have a process by
4 which you would inspect a store?

5 A. As far as what?

6 Q. Well, your own policy or
7 procedure. For instance, every six
8 months you'll have a mechanic come and
9 check to make sure everything is
10 functioning properly.

11 ATTORNEY LEE:

12 In terms of the equipment

13 ---

14 ATTORNEY MONTGOMERY:

15 Yes.

16 ATTORNEY LEE:

17 --- in all your

18 questions.

19 A. No.

20 BY ATTORNEY MONTGOMERY:

21 Q. Has McDonald's --- do they ever
22 send a representative to your store to
23 check your equipment?

24 A. No.

25 Q. Has McDonald's ever come to your

1 franchise for an inspection?

2 ATTORNEY LEE:

3 Object to the form of the
4 question. You can answer.

5 A. The company has a restaurant
6 improvement process, and they come
7 three times a year, one announced and
8 two unannounced, to inspect the
9 operation.

10 BY ATTORNEY MONTGOMERY:

11 Q. If a piece of your equipment
12 were to break, how would you go about
13 repairing it?

14 A. I'd either hire an outside
15 repair service or fix it in house by my
16 own people depending upon the severity
17 of the problem.

18 Q. Would you have to seek approval
19 from McDonald's on what service to hire
20 in order to fix it?

21 A. No.

22 Q. All right. We're going to go to
23 the actual incident in question. Just
24 bear with me for one second.

25 OFF RECORD DISCUSSION

1 company or ---?

2 A. Insurance company.

3 BY ATTORNEY MONTGOMERY:

4 Q. Whose insurance company?

5 A. My insurance company.

6 Q. Redirecting your attention to
7 page five of the franchise
8 agreement, ---.

9 ATTORNEY LEE:

10 Which exhibit?

11 ATTORNEY MONTGOMERY:

12 Exhibit One or A.

13 BY ATTORNEY MONTGOMERY:

14 Q. With regard to --- before the
15 document goes into A and B under 12,
16 what does the paragraph say right
17 before that, McDonald's shall have the
18 right ---?

19 A. To inspect the restaurant at
20 reasonable time to ensure the
21 licensee's operation ---

22 ATTORNEY LEE:

23 Slow down.

24 A. --- is in compliance with the
25 standards and policies of the

1 McDonald's system.

2 BY ATTORNEY MONTGOMERY:

3 Q. Continue.

4 A. Licensee shall comply with the
5 entire McDonald's system, including but
6 not limited to the following.

7 Q. And then it goes on to --- what
8 does it say in subparagraph (b)?

9 A. Purchase kitchen fixtures,
10 lighting and other equipment, seating
11 and signs in accordance with equipment
12 specifications and layout initially
13 designed by McDonald's and promptly,
14 after notice from McDonald's that the
15 restaurant/premises are ready for
16 occupancy, cause the installation
17 thereof.

18 ATTORNEY MONTGOMERY:

19 That's all I have.

20 ATTORNEY LEE:

21 Just a couple of
22 follow-ups.

23 RE-EXAMINATION

24 BY ATTORNEY LEE:

25 Q. Mr. Beatty, does the fact that

EXHIBIT

C

1 A. I was working when the incident
2 report was filled out.

3 Q. Okay. All right. In your
4 experience at McDonald's, how long do
5 french fryers usually last before they
6 need to be replaced?

7 A. I don't recall. I don't have an
8 answer to that.

9 Q. Okay. Do representatives of
10 McDonald's ever visit your store?

11 A. Yes.

12 Q. For what different reasons would
13 they visit?

14 A. For a full operations review or
15 a short operations review.

16 Q. And what is a full operations
17 review?

18 A. They come in and they check
19 holding times, temperatures, equipment
20 calibrations, service steps, quality of
21 food.

22 Q. Do they ever inspect the
23 equipment you're using?

24 A. No.

25 Q. And what was the other type

1 of ---?

2 A. A short operations review.

3 Q. What does the short operations
4 review review?

5 A. It's from a customer's point of
6 view. They come in and it's a shorter
7 visit. It doesn't go into as much
8 depth, and they check your service and
9 your quality from a customer's point of
10 view.

11 Q. Do they then provide you with a
12 report on how you did?

13 A. Yes.

14 Q. And how do they generally score
15 you? I mean, do they give you, you
16 know, a percentage or do they give you
17 an A or a B?

18 A. We're scored by percentage.

19 Q. Were both of those --- was both
20 the quality and an operations check and
21 a short operations check performed in
22 2003?

23 ATTORNEY LEE:

24 Object to the form of the
25 question. If you understand,

1 you can answer.

2 A. No.

3 BY ATTORNEY MONTGOMERY:

4 Q. No ---?

5 A. No, I don't understand your
6 question.

7 Q. Okay. You said that they come
8 and they do what, a short operation?

9 A. They do a short operations
10 review and a full operations review.

11 Q. Was a short operations review
12 done in 2003?

13 A. I'm sure at some point in time.

14 Q. Okay. And a quality operations
15 review was done as well?

16 A. We don't have a quality
17 operations review. We have a full
18 operations review.

19 Q. Full operations review. Was a
20 full operations review conducted?

21 A. I don't recall, because it runs
22 in an 18-month cycle.

23 Q. Do you remember what score you
24 received on the short operations
25 review?

1 A. No, I don't.

2 Q. What would happen if you
3 received --- I mean, what is considered
4 a bad score on a short operations
5 review? Is there a minimum score you
6 need to keep in order to keep running
7 the restaurant?

8 A. No.

9 ATTORNEY LEE:

10 Object to the form of the
11 question.

12 ATTORNEY MONTGOMERY:

13 Let me re-ask it.

14 BY ATTORNEY MONTGOMERY:

15 A. Is there a minimum score you
16 need to achieve on the short operations
17 review in order to be in compliance
18 with the McDonald's system?

19 A. Yes.

20 Q. Okay. What is that score?

21 A. An 80 percent.

22 Q. How about what's the minimum
23 score on the full operations review?

24 A. The same.

25 Q. Has the DuBois McDonald's ever

1 been below the 80 percent in either of
2 those two reviews?

3 A. What do you mean by ever? In
4 the existence of it?

5 Q. Yes.

6 A. I don't recall.

7 Q. Do you keep a record of those
8 operation reviews at the McDonald's?

9 A. They're at the office.

10 Q. And where is the office located?

11 A. 112 Dixon Avenue.

12 Q. Did you ever report the incident
13 directly to McDonald's Corporation?

14 A. No.

15 Q. So you reported the incident
16 directly to the insurance company?

17 A. Yes.

18 Q. Do you know what that insurance
19 company was?

20 A. No.

21 Q. Was that insurance company the
22 insurance company that's now insuring?

23 A. I don't know.

24 Q. Okay. Who performs the
25 inspections, the calibration, the oil

1 Q. Okay. Do you remember, did you
2 tell him that you weren't going to
3 argue about the liability in this
4 situation?

5 A. I don't recall that either.

6 Q. Okay. Does McDonald's have to
7 provide you with notice before they
8 come in and inspect your store?

9 A. On one time they give notice.
10 On the other times they don't.

11 Q. You said on one time they give
12 notice. On the other ---.

13 A. On the FOR they tell you they're
14 coming in. On the SORs, they're
15 unannounced.

16 Q. So is there more than one SOR?

17 A. Two.

18 Q. There's two. Okay. And what
19 would happen if you received a score
20 lower than 80 percent on either of
21 those reviews?

22 A. What do you mean what would
23 happen?

24 Q. What happens? I mean, they
25 obviously give you a score for a

1 reason. And if you received a score
2 lower than the minimum requirement,
3 what action would McDonald's
4 Corporation take?

5 ATTORNEY LEE:

6 If you know.

7 A. I don't know.

8 BY ATTORNEY MONTGOMERY:

9 Q. I mean, would there be some sort
10 of action?

11 ATTORNEY LEE:

12 If you know.

13 A. I don't know.

14 BY ATTORNEY MONTGOMERY:

15 Q. Is the name Beatty Restaurant
16 Enterprises visible on your McDonald's
17 anywhere?

18 A. On our licenses.

19 Q. And where are the licenses
20 located?

21 A. Posted inside the door.

22 Q. Inside the main entrance?

23 A. Uh-huh (yes), on the wall.

24 Q. Does McDonald's require you to
25 do that?

FILED

JAN 11 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiff,

v.

McDONALD'S CORPORATION and
BEATTY RESTAURANT ENTERPRISES,
INC., t/d/b/a/ McDONALD'S,

Defendant.

CIVIL DIVISION

No. 2004 - 1053 - CD

Issue No.

**DEFENDANT'S RESPONSE TO MOTION
TO LIFT PROTECTIVE ORDER**

Code:

Filed on behalf of Defendant, McDonald's
Corporation

Counsel of record for this party:

Christopher T. Lee, Esquire
PA I.D. # 62422

Andrew T. Tillapaugh, Esquire
PA I.D. #90049

DICKIE, MCCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED *NO CC*
7/10:55/84
JAN 11 2007 *CR*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETER NAKOSKI and KATHERINE	)	CIVIL DIVISION
NAKOSKI, his wife,)	
	)	No. 2004 - 1053 - CD
Plaintiff,)	
)	
v.)	
)	
McDONALD'S CORPORATION and)	
BEATTY RESTAURANT ENTERPRISES,)	
INC., t/d/b/a/ McDONALD'S,)	
)	
Defendant.)	

DEFENDANT'S RESPONSE TO
MOTION TO LIFT PROTECTIVE ORDER

AND NOW, comes the Defendant, McDonald's Corporation, by and through its counsel, Dickie, McCamey & Chilcote, P.C., and files the within Response to Motion to Lift Protective Order.

1. On November 3, 2006, McDonald's Corporation, filed a Motion for Summary Judgment ("Motion") and a Motion for Protective Order.

2. In the Motion, McDonald's Corporation requested that this Court dismiss Plaintiffs' claim against them with prejudice because the evidence shows that McDonald's Corporation does not own, operate or maintain the French fryer or fry rack alleged to be involved in this case. Thus, Plaintiffs have failed to set forth any evidence that McDonald's Corporation should be a party in this matter.

3. In the Motion for Protective Order, McDonald's Corporation sought to preclude the deposition of a corporate designee. This Court granted the Motion for Protective Order and established a sixty day period in which Plaintiffs were allowed to continue with discovery.

4. During that time, Plaintiffs took the deposition of Fred Beatty, the owner of Beatty Restaurant Enterprises, Inc., t/d/b/a McDonald's ("Beatty Restaurant"). At that deposition, McDonald's Corporation discovered further support for its Motion. As a result, McDonald's Corporation filed a Supplement to Motion for Summary Judgment ("Supplement to Motion") on January 9, 2006.

5. Plaintiffs have now filed a Motion to Lift Protective Order ("Motion to Lift") and are seeking to take the deposition of McDonald's Corporation's corporate designee.

6. In its Motion to Lift, Plaintiffs mistakenly state that McDonald's Corporation's Motion is premised "merely on an affidavit."¹ In support of its Motion, McDonald's Corporation has relied on the following:

- i. Affidavit of Geneace Williams, managing counsel for McDonald's Corporation
- ii. Franchise Agreement between Beatty Restaurant and McDonald's Corporation
- iii. Insurance documents, noting that Beatty Restaurant owns and maintains the restaurant and has a policy of one million dollars per person for loss for the applicable time period.
- iv. Co-defendant Fred Beatty's deposition testimony

7. In support of their argument that a genuine issue of material fact exists, Plaintiffs point to Paragraph 12 of the Franchise Agreement. See Plaintiffs' Motion to Lift, Paragraph 13. Specifically, Plaintiffs assert that Paragraph 12 demonstrates that McDonald's Corporation

¹ In their Motion to Lift, Plaintiffs assert that McDonald's Corporation's would fall victim to a Nanty-Glo challenge. Plaintiffs' Motion to Lift, Paragraphs 7, 11. See Nanty-Glo v. American Surety Co., 309 Pa. 236, 163 A. 523 (1932). The Nanty-Glo rule states that summary judgment is not proper where the "moving party relies **exclusively** on oral testimony, either through testimonial affidavits or deposition testimony, to establish the absence of a genuine issue of material fact."

Here, McDonald's Corporation is not relying exclusively on oral testimony. It has also relied on the Franchise Agreement, and business and insurance documents. Kniaz v. Benton Borough, 642 A.2d 551, 553 (Pa. Cmwlth. 1994) ("testimonial affidavits and oral depositions of the moving party, **without supporting documents**, are insufficient to support a motion for summary judgment").

controlled the maintenance standards for and purchasing of the “subject French fryer and fry rack.” Plaintiffs’ Motion to Lift, Paragraph 14.

8. To the contrary, Paragraph 12 of the Franchise Agreement actually places the burden of maintaining and purchasing on Beatty Restaurant. Specifically, Paragraph 12 provides, in relevant part: “12. ...Licensee **shall... (a)... maintain** the building, **equipment**, signage, seating and décor and parking area, in a good, clean, wholesome condition and repair... (b) **Purchase kitchen fixtures**, lighting and other equipment, seating, and signs in accordance with the equipment specifications and layout initially designated by McDonald’s...” See Franchise Agreement at ¶ 12, attached to Motion for Summary Judgment. (emphasis added)

9. In addition to Paragraph 12 of the Franchise Agreement, Plaintiffs also rely on the fact that McDonald’s Corporation conducts operational inspections a couple times a year to prove McDonald’s Corporation’s control over the restaurant. See Plaintiffs’ Motion to Lift, Paragraph 15-18.

10. Such an inspection, however, does not include checking the restaurant’s equipment. In fact, Mr. Beatty testified that McDonald’s Corporation has never sent a representative to his restaurant to check the equipment. See Beatty 12/12/06 Dep. at 32-33, attached as Exhibit A. Moreover, all equipment maintenance is conducted by Beatty Restaurants, without having to seek the approval of McDonald’s Corporation. Id.

WHEREFORE, Defendant, McDonald's Corporation, respectfully requests that this Honorable Court deny Plaintiffs' Motion to Lift Protective Order, thereby prohibiting Plaintiffs' counsel from taking the deposition of McDonald's Corporation's corporate designee in this matter.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By Andrew T. Tillapaugh
Christopher T. Lee, Esquire
Pa. I.D. #62422
Andrew T. Tillapaugh, Esquire
Pa. I.D. #90049

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

*Attorneys for Defendant, McDonald's
Corporation*

CERTIFICATE OF SERVICE

I, Andrew T. Tillapaugh, Esquire, hereby certify that a true and correct copy of the foregoing **DEFENDANT'S RESPONSE TO MOTION TO LIFT PROTECTIVE ORDER** has been served this 9th day of January, 2007, by U.S. first-class mail, postage prepaid, to all counsel of record:

Hal K. Waldman, Esquire
Suite 300, Dominion Tower
625 Liberty Avenue
Pittsburgh, PA 15222
Attorneys for Plaintiff

DICKIE, McCAMEY & CHILCOTE, P.C.

By Andrew T. Tillapaugh
Andrew T. Tillapaugh, Esquire

*Attorneys for Defendant, McDonald's
Corporation*

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA
CIVIL DIVISION

* * * * *

*

PETER NAKOSKI and *
KATHERINE NAKOSKI, *
his wife, *

Plaintiffs *

vs. *

MCDONALD'S *

CORPORATION and *

BEATTY RESTAURANT *

ENTERPRISES, INC., *

t/d/b/a MCDONALD'S, *

Defendants *

*

* * * * *

DEPOSITION OF
FREDERICK EDWARD BEATTY
DECEMBER 12, 2006

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by the certifying agency.

COPY

1 equipment is functioning properly.

2 A. Not a formal inspection, no.

3 Q. Okay. Do you have a process by
4 which you would inspect a store?

5 A. As far as what?

6 Q. Well, your own policy or
7 procedure. For instance, every six
8 months you'll have a mechanic come and
9 check to make sure everything is
10 functioning properly.

11 ATTORNEY LEE:

12 In terms of the equipment

13 ---

14 ATTORNEY MONTGOMERY:

15 Yes.

16 ATTORNEY LEE:

17 --- in all your
18 questions.

19 A. No.

20 BY ATTORNEY MONTGOMERY:

21 Q. Has McDonald's --- do they ever
22 send a representative to your store to
23 check your equipment?

24 A. No.

25 Q. Has McDonald's ever come to your

1 franchise for an inspection?

2 ATTORNEY LEE:

3 Object to the form of the
4 question. You can answer.

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6 improvement process, and they come
7 three times a year, one announced and
8 two unannounced, to inspect the
9 operation.

10 BY ATTORNEY MONTGOMERY:

11 Q. If a piece of your equipment
12 were to break, how would you go about
13 repairing it?

14 A. I'd either hire an outside
15 repair service or fix it in house by my
16 own people depending upon the severity
17 of the problem.

18 Q. Would you have to seek approval
19 from McDonald's on what service to hire
20 in order to fix it?

21 A. No.

22 Q. All right. We're going to go to
23 the actual incident in question. Just
24 bear with me for one second.

25 OFF RECORD DISCUSSION

FILED

JAN 11 2007

**William A. Shaw
Prothonotary/Clerk of Courts**

CA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

PETER NAKOSKI AND
KATHERINE, his wife

-vs-

MCDONALD'S CORPORATION AND
BEATTY RESTAURANT
ENTERPRISES, INC., t/d/b/a
MCDONALD'S

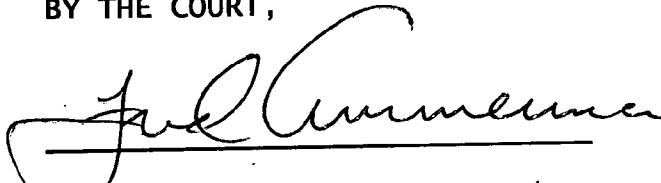
No. 04-1053-CD

O R D E R

AND NOW, this 12th day of January, 2007,
following argument on the Defendants' Motion for Summary
Judgment and the Plaintiffs' Motion to Lift Protective
Order, it is the ORDER of this Court as follows:

1. The Motion for Summary Judgment is hereby
denied;
2. The Motion to Lift Protective Order is
hereby granted. The provisions of this Court's order of
November 7, 2006, granting a Protective Order are hereby
rescinded.

BY THE COURT,


President Judge

FILED
01/14/07
JAN 15 2007

William A. Shaw
Prothonotary/Clerk of Courts

2cc
Waldman
C. Lee
S. Smith

(6K)

FILED

JAN 15 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/15/07

____ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) X Plaintiff(s) Attorney ____ Other

____ Defendant(s) X Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PETER NAKOSKI and KATHERINE
NAKOSKI, his wife,

Plaintiffs,

vs.

MCDONALD'S CORPORATION and
BEATTY RESTAURANT
ENTERPRISES, INC. t/d/b/a
MCDONALD'S,

Defendants.

CIVIL DIVISION

No.: 2004 – 1053 - CD

**PRAECIPE TO SETTLE
AND DISCONTINUE**

Filed on Behalf of Plaintiffs

Counsel of Record for this Party

Timothy A. Montgomery, Esquire
PA I.D.#: 94179

Hal K. Waldman and Associates
Dominion Tower, Suite 300
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

JURY TRIAL DEMANDED

FILED *EW*

FEB 15 2007

W/ 12:25/ W
William A. Shaw
Prothonotary/Clerk of Courts

*1 SENT. TO App
COPY TO C/A*

DATE: 2/13/07

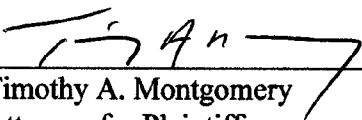
CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2007, a copy of this Praecipe to Settle and Discontinue was served by First Class Mail upon the attorney of record for Defendant as follows:

Christopher T. Lee, Esquire
Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222

Respectfully submitted:

By:



Timothy A. Montgomery
Attorney for Plaintiffs

Dominion Tower, Suite 300
625 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1000

Prothonotary/Clerk of Courts
William A. Shaw

FEB 15 2007

FILED